

**Meeting of the Central Valley Flood Protection Board  
December 20, 2019**

**Staff Report  
Agenda Item No. 9A**

**Three Rivers Levee Improvement Authority Phased Levee  
Improvement Project  
Transfer of Operation and Maintenance Responsibilities to  
Reclamation District 784, Yuba County**

**1.0 – ITEM**

Consider transfer of operation and maintenance responsibilities for the Three Rivers Levee Improvement Authority (TRLIA) Phased Levee Improvement Project (Attachment A) through Resolution 2019-28 (Attachment B) which:

- Acknowledges acceptance, from the United States Army Corps of Engineers (USACE), of the responsibility to operate and maintain the TRLIA Phased Levee Improvement Project (Project);
- Acknowledges receipt, from the USACE, the revised *Supplement to Standard Operations and Maintenance Manual, Sacramento River Flood Control Project, Unit No. 145, East Levee of the Feather River, South Levee of Yuba River, Both Levees of the Western Pacific Railroad Intercepting Channel (WPIC), West Levee of South Dry Creek, and North Levee of Bear River*, U. S. Army Corps of Engineers, Sacramento District, August 2019 (Supplement O&M Manual), which combined Unit No. 145 and Unit No. 149 to form one comprehensive supplement;
- Acknowledges receipt, from the USACE, final project as-built drawings, originally prepared by TRLIA and Reclamation District 784 (RD 784), along with the above documentation;
- Finds that the Project is exempt from CEQA pursuant to the Ministerial Projects Exception;
- Transfers via letter (Attachment C) responsibilities to operate and maintain the Project to RD 784, along with the above documentation; and
- Directs the Central Valley Flood Protection Board (Board)'s Executive Officer to file a Notice of Exemption with the State Clearinghouse.

## **2.0 – PROJECT PROPONENT AND DESCRIPTION**

TRLIA and RD 784 proposed the Project and have operated and maintained Unit No. 145 – Part No. 1 and Unit 149 of the Sacramento River Flood Control Project in accordance with the Supplement to Standard Operation and Maintenance Manual, Sacramento River Flood Control Project (SRFCP):

- Unit No. 145 – Part No. 1 which includes:
  - Feather River East Levee
  - Yuba River South Levee (lower)
  - Both Levees of the WPIC
  - South Dry Creek West Levee
  - Bear River North Levee
  - All within the USACE Sacramento District O & M Manual dated August 1955; and
- Unit No. 149 which includes:
  - Yuba River South Levee (upper), Maintenance Area No. 8, USACE Sacramento District O & M Manual dated March 1963

On August 6, 2019, the operation and maintenance manuals for Unit 145 and 149 were officially combined by the USACE to form one Supplemental O&M Manual for RD 784.

## **3.0 – PROJECT LOCATION AND DESCRIPTION**

The constructed Project is in Yuba County (Attachment A) along the:

- Left (south) bank of the Yuba River Levee between Highway 70 and the Goldfields,
- East Feather River from the confluence of the Yuba River downstream to the confluence of the Bear River,
- Lower Bear River North Levee from the confluence of the Feather River upstream to the Western Pacific Interceptor Canal (WPIC), and
- West Levee of the WPIC north to the Olivehurst Detention Basin.

The Project included construction of approximately 27 miles of setback levee, reconstructed levees, cutoff walls, project levee degrades, and mitigation planting. TRLIA proposed the Project for RD 784 to address flood protection deficiencies. The Project consisted of four phases to improve levees with the goal of achieving 200-year flood protection for South Yuba County (Attachment A):

- **Phase 1** – Construction of a 50-foot-deep slurry wall in the left bank of the Yuba River between Highway 70 and Union Pacific Railroad (UPRR) (Unit 1).
- **Phase 2** – Raising and strengthening portions of the Bear River right bank (Unit 8) and the right bank WPIC (Unit 4) and construction of a seepage berm along the Yuba River left bank east of Highway 70 and west of the UPRR (Unit 1).
- **Phase 3** – Construction of a two-mile setback levee along the Bear River north of the original tie-in of the right bank of the Bear River with the left bank of the Feather River (Unit 8); and
- **Phase 4** – Construction of multiple improvements along three segments on the east side of Feather River including, on Segment 2, a new setback levee and degrading of the old levee (Unit 9), cutoff walls, stability berms, relief wells, waterside levee slope blankets, and toe access corridor on the existing east levee on Segment 1 and 3 (Unit 2A & 2B). On the existing Yuba River South Levee, construction of a cutoff wall and seepage berm above Highway 70 to east of Simpson Lane and a seepage berm at the 1986 levee break (Highway 70 to UPRR) (Unit 1). On the Upper Yuba River South Levee, construction of a cutoff wall and stability berm from Simpson Lane to Goldfields (Unit 7).

#### **4.0 – AUTHORITY OF THE BOARD**

California Water Code, Division 5, Part 2, Chapter 3, § 8350 and § 8370  
California Code of Regulations, Title 23, Division 1 (Title 23):

- § 108, Existing Encroachments within an Adopted Plan of Flood Control
- § 112, Streams Regulated and Non permissible Work Periods
- § 116, Borrow and Excavation Activities – Land and Channel
- § 117, Supplemental Borrow Standards for the Yuba River
- § 120, Levees
- § 121, Erosion Control
- § 122, Irrigation and Drainage Ditches
- § 123, Pipelines, Conduits and Utility Lines
- § 124, Abandonment of Pipelines
- § 130, Patrol Roads and Access Ramps
- § 131, Vegetation

Rivers and Harbors Act of 1899, Title 33 United States Code § 408 (Section 408)

Prior and revised Supplement O&M Manuals

## **5.0 – PROJECT APPROVAL, PERMITTING, CONSTRUCTION, AND DOCUMENTATION**

The Department of Water Resources (DWR) and TRLIA executed Early Implementation Program (EIP) Funding Agreements No. 4600008049 and No. 4600008654 on May 1, 2006 and October 1, 2009 to fund the State's share of project costs for the Feather River Levee Improvement Project (FRLIP) and the Upper Yuba Levee Improvement Project (UYLIP). Portions of TRLIA's Project was funded through these funding agreements. State funding was provided by the California Disaster Preparedness and Flood Prevention Bond Act of 2006 and the California Safe Drinking Water, Water Quality and Supply, Flood Control, River and Coastal Protection Bond Act of 2006. The local shares of project costs were funded through TRLIA and its local cost sharing partners.

Section 408 provides authority to the Secretary of the Army (Secretary) to grant permission for alteration or modification of USACE projects when in the judgment of the Secretary such alteration or modification will not be injurious to the public interest and will not impair the usefulness of the project.

The Board, pursuant to Section 408, requested on behalf of TRLIA, permission from the USACE to alter portions of the SRFCP, and gave assurances to the USACE that TRLIA would accomplish these alterations in a manner that would not be injurious to the public interest and would not impair the usefulness of the SRFCP.

The Board conducted public hearings for Permits Nos. 17782, 18123, 17979, 17828, 17921, 18095, 18095-Rev, 18577, 18986, 18170, 18170-Rev, 18227, 18430, 18869, 18170-1 between March 2006 and April 2015 (Attachment D). At these hearings the Board approved sending Section 408 request letters to the USACE and approved the permits conditioned upon anticipated USACE Section 408 approval.

The USACE Headquarters and District Offices approved the Board's fifteen (15) Permits that requested alteration of the SRFCP as part of the Project pursuant to Section 408 Major Modifications to a Flood Control Project and 33 Code of Federal Regulation Section 208.10. The Project was the subject to USACE Section 408 Permissions between September 2004 and April 2015 (Attachment D).

TRLIA substantially completed construction work under these fifteen (15) Board Permits between 2006 and 2015. The Project included construction of new setback levees, reconstructed levees, cutoff walls, project levee degrades, excavation, pump station replacement, and mitigation planting.

As required by the EIP Funding Agreements, on July 22, 2011, the Board conducted a public hearing and approved an Operation, Maintenance, Repair, Replacement, and Rehabilitation Agreement (OMRR&R) with TRLIA and RD 784 for the FRLIP and UYLIP. The Board executed the OMRR&R Agreement on August 26, 2011 (Attachment G).

In accordance with guidelines of the USACE Engineering Regulation 1110-2-401 *Operation, Maintenance, Repair, Replacement, and Rehabilitation Manual for Projects and Separable Elements Managed by Project Sponsors, September 30, 1994*, TRLIA submitted an addendum to the *Supplement to Standard Operation and Maintenance Manual for the Sacramento River Flood Control Project, Unit No. 145 – Part No.1 and Unit No. 149, Maintenance Area No. 8, Reclamation District 784 Improvement*), along with as-built drawings (Attachment I), Bear River Setback Levee Project Construction Completion Report (CCR) dated May 2007, Construction Documentation Report dated June 2007, FRLIP Segments 1&3 and five supplemental addendums dated June 2009 through December 2014, Feather River Levee Repair Project Levee Segment 2 CCR dated May 2010, UYLIP CCR dated March 2013, and CCR for Yuba River South Levee Station 2154+00 Remediation dated January 2016. Board Staff subsequently transmitted these documents to the USACE.

On May 29, 2019, after completion of CCRs and Supplemental O&M Manual, Board staff notified the USACE Sacramento District and TRLIA and RD 784 by letter that it had determined that the Project (Attachment E):

- was constructed in accordance with final (100 percent) plans and specifications,
- met all Board permit conditions (including all USACE conditions incorporated into the Board permit), and
- was compliant with the California Code of Regulations, Title 23, Division 1.

On August 6, 2019 the USACE, Sacramento District informed Board staff by letter (Attachment F) that it had:

- completed its review of the TRLIA submittals;
- determined that the local improvements were constructed in accordance with the final (100 percent) plans and specifications;
- accepted the Project as part of the SRFCP;
- officially combined the operation and maintenance manuals for SRFCP Unit No. 145 and Unit No. 149 into one comprehensive supplement called *Supplement to Standard Operation and Maintenance Manual Sacramento River Flood Control Project, Unit No. 145, East Levee of Feather River, South Levee of Yuba River, Both Levees of W.P.R.R. Intercepting Channel, West Levee of South Dry Creek and North Levee of Bear River* (Supplemental O&M Manual);

- transmitted the revised Supplemental O&M Manual and project as-built drawings to Board staff; and
- assigned the Board responsibilities to operate and maintain the Project as part of the SRFCP.

## **6.0 – ENGINEER’S CERTIFICATION FOR PROJECT COMPLETION**

The Project was certified by professional engineering firms in three separate reports in 2010, 2013, and 2019 and one USACE 2007 letter (Attachment H). CCRs and other related documents were used to evaluate and certify the levee projects in 10 different segments:

1. Yuba River South Levee (Simpson Lane to Goldfields)
2. Yuba River South Levee (UPRR to Simpson Lane)
3. Yuba River South Levee (WPRR to Simpson Lane)
4. Feather River East Levee Segment 1
5. Feather River East Levee Segment 2
6. Feather River East Levee Segment 3
7. Bear River North Setback Levee - 2010
8. Upper Bear North Levee (Setback Levee to WPIC) and WPIC West Levee
9. Yuba River South Levee (Hwy 70 to UPPR) at 1986 Levee Breach
10. Feather River East Levee Segment 1, Erosion Protection Berm

## **7.0 – CEQA ANALYSIS**

The Board has determined the following in accordance with Title 14, California Code of Regulations, Guidelines for Implementation of the California Environmental Quality Act (CEQA):

This action is the transfer of operations and maintenance responsibilities and corresponding documents for the completed Project to RD 784 and is statutorily exempt from CEQA under CEQA Guidelines § 15268 (a) which provides that ministerial projects are exempt from the requirements of CEQA. The determination of what is “ministerial” can most appropriately be made by the particular public agency involved based upon its analysis of its own laws, and each public agency should make such determination either as a part of its implementing regulations or on a case-by-case basis.

TRLIA, as lead agency under CEQA, prepared all environmental documents. The Board, as a CEQA responsible agency, has previously approved construction of project works under Permit Nos. 17782, 18123, 17979, 17828, 17921, 18095, 18095-Rev,

18577, 18986, 18170, 18170-Rev, 18227, 18430, 18869, and 18170-1 (Attachment D). The Board made appropriate CEQA findings and filed determinations with the State Clearinghouse.

The action before the Board consists solely of the transfer of operations and maintenance responsibilities and corresponding documents for the completed Project to RD 784. This action constitutes a ministerial approval statutorily exempt from CEQA under CEQA Guidelines § 15268 (a).

### **8.0 – REAL ESTATE ACQUISITION; SACRAMENTO AND SAN JOAQUIN DRAINAGE DISTRICT (SSJDD)**

Board staff reviewed adjacent project landowner maps created with Parcel Quest software. Staff mailed those landowners standard Adjacent Landowner Letters, alerting them of the proposed project and their right to protest under CCR 23, § 12. Board staff did not receive any formal written protests.

The applicant, TRLIA, sent DWR Land and Right of Way documentation to prepare all easements (permanent and temporary) and deed transfers in the name of Sacramento and San Joaquin Drainage District (SSJDD) except for a few pending landowner negotiations on the UYLIP and WPIC. The real estate transfer is complete for the levee footprint of Permit No. 18227 (Feather River Setback Levee), but the setback area is still pending transfer to SSJDD. The remaining portions of the Project are in process of being transferred to SSJDD. DWR has not completed all the easement agreements and deeds; however, the action being sought is not dependent upon these transfers being completed.

### **9.0 – STAFF CONCLUSION**

Board staff concludes that the Project was constructed in accordance with the final plans and specifications, met all permit conditions from both the Board and USACE, is compliant with Title 23, and was properly certified by California licensed professional engineers.

Staff further concludes that the project was properly transferred by the USACE to the Board and that all necessary review and determinations have been made to transfer operations and maintenance responsibilities to RD 784 as the local maintaining agency.

## **12.0 – STAFF RECOMMENDATION**

Staff recommends that the Board adopt Resolution 2019-28, which:

1. **Acknowledges** acceptance, from the USACE, of the responsibility to operate and maintain the Project, as described in the USACE-accepted Supplemental O&M Manual.
2. **Finds** that the transfer of operations and maintenance responsibilities and corresponding documents for the completed project to RD 784 constitutes a ministerial approval statutorily exempt from CEQA.
3. **Delegates** authority to the Executive Officer to serve as the custodian of the CEQA record.
4. **Finds** that the transfer of operations and maintenance responsibilities to RD 784 in accordance with the Supplemental O&M Manual and project as-built drawings, in compliance with conditions of Board Permits Nos. 17782, 18123, 17979, 17828, 17921, 18095, 18095-Rev, 18577, 18986, 18170, 18170-Rev, 18227, 18430, 18869, and 18170-1, is in the public interest.
5. **Transfers** operation and maintenance responsibilities along with copies of the Supplement O&M Manual and as-builts drawings to RD 784 through approval of the draft *Transfer of Operations and Maintenance Responsibilities for the Three River Levee Improvement Authority in Yuba County to Reclamation District 784* letter.
6. **Directs** the Board's Executive Officer to:
  - a. Execute the Transfer Letter in substantially the form provided; and
  - b. File a Notice of Exemption with the State Clearinghouse.

## **11.0 – LIST OF ATTACHMENTS**

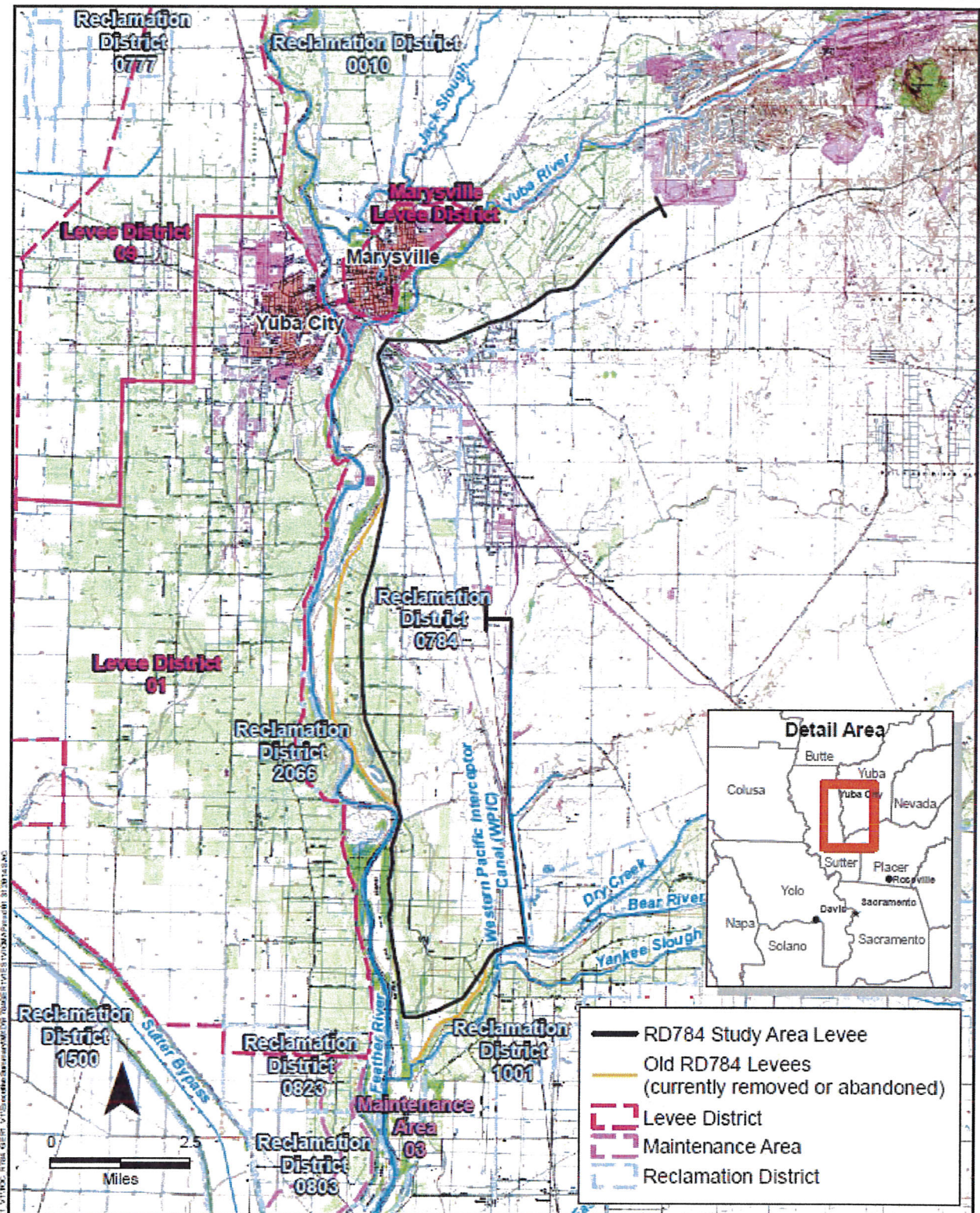
- A. Project Maps
- B. Board Draft Resolution 2019-28
- C. Draft Operations and Maintenance Transfer Letter to RD 784
- D. \*\*Detailed Spreadsheet and approved fifteen (15) Board Permits
- E. Board Permit Acceptance Letter
- F. USACE Operations and Maintenance Transfer Letter to the Board
- G. OMRR&R Agreement

- H. \*\*Engineer Certifications for Project Completion
- I. \*\*Revised Supplemental O&M Manual and As-Builts

*\*\* Attachments may be viewed or downloaded from the Board website at <http://www.cvfpb.ca.gov/meetings/2019/12-20-2019.cfm> or <http://www.trlia.org/DesignConstruction.asp#leveecert>.  
The documents are also available for review in hard copy at the Board.*

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Project Closeout Review:	Connie Perkins, P.E., Senior Engineer, PIC Branch
Staff Report:	Connie Perkins, P.E., Senior Engineer, PIC Branch
Document Review:	Greg Harvey, P.E., PIC Branch Chief Engineer Michael Wright, P.E., Chief Engineer
Environmental Review:	James Herota and Itzia Rivera, Senior Environmental Scientists, Environmental Services Section
Legal Review:	Sarah Backus, Staff Counsel

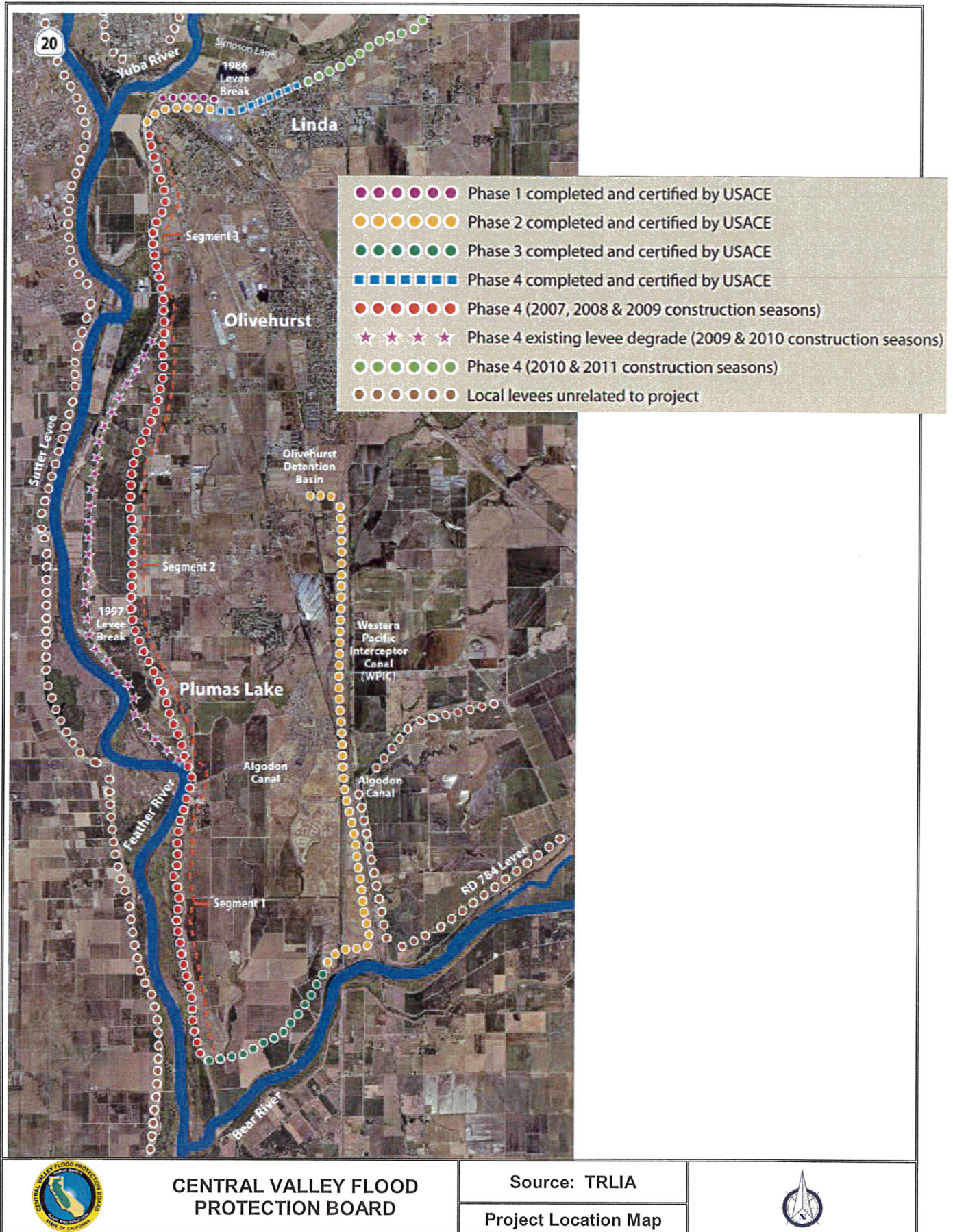


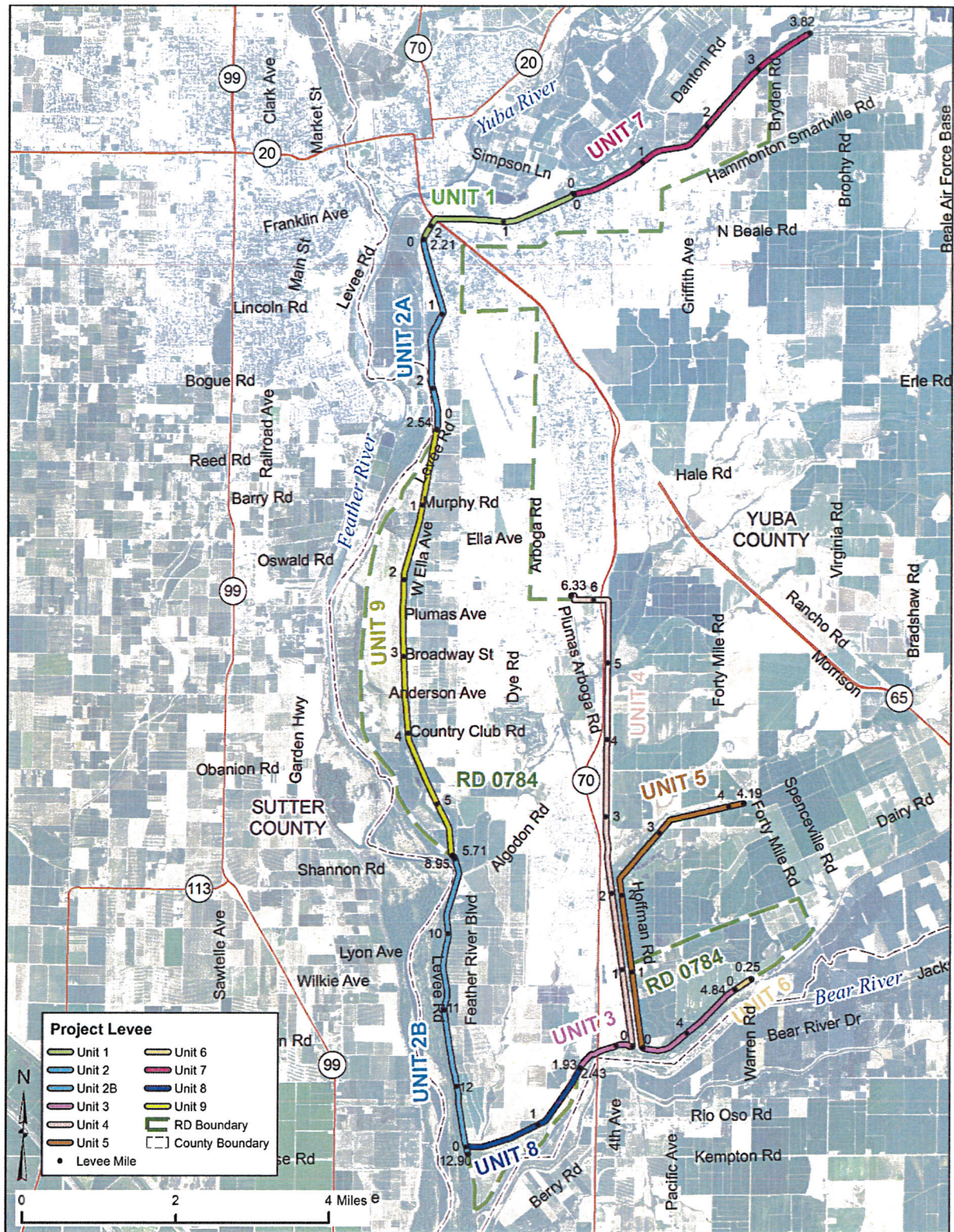
**CENTRAL VALLEY FLOOD  
PROTECTION BOARD**

Source: DWR/URS

Project Vicinity Map







STATE OF CALIFORNIA  
CALIFORNIA NATURAL RESOURCES AGENCY  
CENTRAL VALLEY FLOOD PROTECTION BOARD

DRAFT RESOLUTION NO. 2019-28

AUTHORIZING TRANSFER OF OPERATIONS AND MAINTENANCE  
RESPONSIBILITIES

FOR THE EAST LEVEE OF FEATHER RIVER BOUNDED BY THE YUBA RIVER ON  
THE NORTH AND THE BEAR RIVER ON THE SOUTH, THE YUBA RIVER SOUTH  
LEVEE (LOWER AND UPPER), THE BEAR RIVER NORTH LEVEE, WEST LEVEE OF  
SOUTH DRY CREEK and BOTH LEVEES OF THE WESTERN PACIFIC RAILROAD  
INTERCEPTING CHANNEL  
TO RECLAMATION DISTRICT NO. 784, YUBA COUNTY

**WHEREAS**, the Three Rivers Levee Improvement Authority (TRLIA) of Yuba County proposed the Phased Levee Improvement Project (Project) for the Yuba River South Levee, Feather River East Levee, Bear River North Levee, and Western Pacific Railroad Intercepting Channel (WPIC) West Levee; and

**WHEREAS**, Reclamation District 784 (RD 784) has operated and maintained, as the local maintaining agency (LMA), Unit No. 145 and Unit No. 149 of the Sacramento River Flood Control Project (SRFCP) in accordance with the *Supplement to Standard Operation and Maintenance Manual, Sacramento River Flood Control Project, Unit No. 145 – Part No. 1, East Levee of Feather River, South Levee of Yuba River, Both Levees of the W.P.R.R. Intercepting Channel, West Levee of South Dry Creek and North Levee of Bear River, Sacramento District, Corps of Engineers, U.S. Army, Sacramento, California, August 1955*; and *Supplement to Standard Operation and Maintenance Manual, Sacramento River Flood Control Project, Unit No. 149, South Levee of Yuba River, Maintenance Area No. 8, U.S. Army Engineer District, Sacramento, Corps of Engineers, Sacramento, CA, March 1963*; and

**WHEREAS**, the Project is located south of the City of Marysville, west of Highway 70 and south of Feather River Boulevard, Yuba County; and

**WHEREAS**, TRLIA proposed the following four-phased Project for RD 784 to address flood-control deficiencies, with the goal of achieving 200-year flood protection for South Yuba County:

- **Phase 1** – Construction of a 50-foot-deep slurry wall in the left bank of the Yuba River between Highway 70 and Union Pacific Railroad (UPRR);
- **Phase 2** – Raising and strengthening portions of the right bank of the Bear River and the right bank WPIC and construction of a seepage berm along the left bank of the Yuba River east of Highway 70 and west of the UPRR;
- **Phase 3** – Construction of a two-mile setback levee along the Bear River north of the original tie-in of the right bank of the Bear River with the left bank of the Feather River; and
- **Phase 4** – Construction of multiple improvements along three segments on the east side of Feather River including, on Segment 2, a new setback levee and degrading of the old levee, cutoff walls, stability berms, relief wells, waterside levee slope blankets, and toe access corridor on the existing east levee on Segment 1 and 3. On the existing Yuba River South Levee, construction of a cutoff wall and seepage berm above Highway 70 to east of Simpson Lane and a seepage berm at the 1986 levee break (Highway 70 to UPRR). On the Upper Yuba River South Levee, construction of a cutoff wall and stability berm from Simpson Lane to Goldfields.

**WHEREAS**, the Department of Water Resources (DWR) and TRLIA executed Early Implementation Program (EIP) Funding Agreements No. 4600008049 and 4600008654 on May 1, 2006 and October 1, 2009 to fund the State's share of project costs. State funding was provided by the California Disaster Preparedness and Flood Prevention Bond Act of 2006 and the California Safe Drinking Water, Water Quality and Supply, Flood Control, River and Coastal Protection Bond Act of 2006. The local shares of project costs were funded through TRLIA and its local cost sharing partners; and

**WHEREAS**, 33 U.S.C. Section 408 (Section 408) provides authority to the Secretary of the Army to grant permission for alteration or modification of U.S. Army Corps of Engineers' (USACE) projects when in the judgment of the Secretary such alteration or modification will not be injurious to the public interest and will not impair the usefulness of the project; and

**WHEREAS**, the Board, pursuant to Section 408, requested on behalf of TRLIA, permission from the USACE to alter portions of the SRFCP, and gave assurances to the USACE that TRLIA would accomplish these alterations in a manner that would not be injurious to the public interest and would not impair the usefulness of the SRFCP; and

**WHEREAS**, the Board conducted public hearings for Permit Nos. 17782, 18123, 17979, 17828, 17921, 18095, 18095-Rev, 18577, 18986, 18170, 18170-Rev, 18227, 18430, 18869, and 18170-1 between March 2006 and April 2015. At these hearings the Board approved sending Section 408 request letters to the USACE and approved the permits conditioned upon anticipated USACE Section 408 approval; and

**WHEREAS**, the USACE Headquarters and District Offices approved the Board's fifteen (15) requests, to alter the SRFCP as part of the Project pursuant to 33 USC Section 408, Major Modifications to a Flood Control Project, and 33 Code of Federal Regulation Section 208.10. The Project was the subject to USACE Section 408 Permissions between September 2004 and April 2015; and

**WHEREAS**, TRLIA substantially completed construction work under these fifteen (15) Board Permits between 2006 and 2015. The Project included construction of new setback levees, reconstructed levees, cutoff walls, project levee degrades, excavation, pump station replacement, and mitigation planting; and

**WHEREAS**, the Board conducted a public hearing on July 22, 2011, and approved an Operation, Maintenance, Repair, Replacement, and Rehabilitation Agreement (OMRR&R) between TRLIA, RD 784, and the Board which was executed on August 26, 2011; and

**WHEREAS**, in accordance with guidelines of the USACE Engineering Regulation 1110-2-401 *Operation, Maintenance, Repair, Replacement, and Rehabilitation Manual for Projects and Separable Elements Managed by Project Sponsors, September 30, 1994*, TRLIA submitted an addendum to the *Supplement to Standard Operation and Maintenance Manual for the Sacramento River Flood Control Project, Unit No. 145 – Part No.1 and Unit No. 149, Maintenance Area No. 8, Reclamation District 784 Improvements*, along with project as-built drawings, Bear River Setback Levee Project Construction Completion Report (CCR) dated May 2007, Construction Documentation Report dated June 2007, Feather River Levee Repair Project Levee Segments 1&3 and five supplemental addenda dated June 2009 through December 2014, Feather River Levee Repair Project Levee Segment 2 CCR dated May 2010, Upper Yuba Levee Improvement Project CCR dated March 2013, and CCR for Yuba River South Levee Station 2154+00 Remediation dated January 2016.; and

**WHEREAS**, on May 29, 2019 Board staff notified the USACE Sacramento District, TRLIA and RD 784 by letter that it had determined that the project:

- was constructed in accordance with final (100 percent) plans and specifications,
- met all Board permit conditions including all USACE conditions incorporated into the Board Permits, and
- complied with California Code of Regulations, Title 23, Division 1; and

**WHEREAS**, on August 6, 2019 the USACE, Sacramento District informed Board staff that it had:

- completed its review of the TRLIA submittals;
- determined that the local improvements were constructed in accordance with the final (100 percent) plans and specifications;
- accepted the Projects as part of the SRFCP;

- officially combined the operation and maintenance manuals for SRFCP Unit No. 145 and Unit No. 149 into one comprehensive supplement called *Supplement to Standard Operation and Maintenance Manual Sacramento River Flood Control Project, Unit No. 145, East Levee of Feather River, South Levee of Yuba River, Both Levees of W.P.R.R. Intercepting Channel, West Levee of South Dry Creek and North Levee of Bear River* (Supplemental O&M Manual);
- transmitted the revised Supplemental O&M Manual, and project as-built drawings to Board staff; and
- assigned to the Board the responsibility to operate and maintain the Projects as part of the SRFCP; and

**WHEREAS**, the Board conducted a public hearing regarding transfer of operations and maintenance responsibilities to RD 784; and

**WHEREAS**, the Board has determined in accordance with Title 14, California Code of Regulations, Guidelines for Implementation of the California Environmental Quality Act (CEQA) that this action is the transfer of operations and maintenance responsibilities and corresponding documents for the completed project to RD 784 and constitutes a ministerial approval statutorily exempt from CEQA under section 15268 (a) of the CEQA Guidelines; and

**WHEREAS**, TRLIA, as lead agency under CEQA, prepared all environmental documents and received Board approval for the Projects, and;

**WHEREAS**, the Board, as a CEQA responsible agency, has previously approved construction of project works under Permit Nos. 17782, 18123, 17979, 17828, 17921, 18095, 18095-Rev, 18577, 18986, 18170, 18170-Rev, 18227, 18430, 18869, and 18170-1 and made appropriate CEQA findings and filed determinations with the State Clearinghouse.

NOW, THEREFORE, BE IT RESOLVED THAT THE BOARD,

1. Adopts as findings the facts set forth in the Staff Report.
2. Acknowledges acceptance, from the USACE, of the responsibility to operate and maintain the Project, as described in the USACE-accepted Supplemental O&M Manual.
3. Finds that the transfer of operations and maintenance responsibilities and corresponding documents for the completed project to RD 784 constitutes a ministerial approval statutorily exempt from CEQA.
4. Delegates authority to the Executive Officer to serve as the custodian of the CEQA record.
5. Finds that the transfer of operations and maintenance responsibilities to RD 784 in accordance with the Supplemental O&M Manual and project as-built drawings, in

compliance with conditions of Board Permits Nos. 17782, 18123, 17979, 17828, 17921, 18095, 18095-Rev, 18577, 18986, 18170, 18170-Rev, 18227, 18430, 18869, and 18170-1, is in the public interest.

6. Transfers operation and maintenance responsibilities along with copies of the Supplement O&M Manual and as-builts drawings to RD 784 through approval of the draft *Transfer of Operations and Maintenance Responsibilities for the Three River Levee Improvement Authority in Yuba County to Reclamation District 784* letter;
7. Directs the Board's Executive Officer to:
  - a. Execute the Transfer Letter in substantially the form provided; and
  - b. File a Notice of Exemption with the State Clearinghouse.

PASSED AND ADOPTED by vote of the Board on \_\_\_\_\_, 2019

\_\_\_\_\_  
William H. Edgar  
President

\_\_\_\_\_  
Jane Dolan  
Vice President/Secretary

STATE OF CALIFORNIA – CALIFORNIA NATURAL RESOURCES AGENCY

GAVIN NEWSOM, GOVERNOR

**CENTRAL VALLEY FLOOD PROTECTION BOARD**

3310 El Camino Ave., Ste. 170  
SACRAMENTO, CA 95821  
(916) 574-0609 FAX: (916) 574-0682



January 6, 2020

Steve Fordice, General Manager  
Reclamation District 784, Yuba County  
1594 Broadway  
Arboga, California 95961

Subject: Transfer of Operations and Maintenance Responsibilities for the Three Rivers  
Levee Improvement Authority Phased Levee Improvement Project in Yuba County  
to Reclamation District 784

Dear Mr. Fordice:

This letter transfers responsibilities for operations and maintenance of completed Three Rivers Levee Improvement Authority (TRLIA) Phased Levee Improvement Project (Project) in Yuba County, which includes a portion of the Yuba River South Levee, Feather River East Levee, Bear River North Levee, and Western Pacific Interceptor Canal (WPIC) West Levee in Unit No. 145 of the Sacramento River Flood Control Project (SRFCP), from the Central Valley Flood Protection Board (Board) to Reclamation District 784 (RD 784).

Board staff had accepted, from the U.S. Army Corps of Engineers (USACE), responsibilities to operate and maintain the Project bounded by the south levee of the Yuba River, east levee of the Feather River, north levee of the Bear River, west levee of South Dry Creek, both levees of WPIC, and associated channels. This transfer was received on August 6, 2019.

The Project included construction of approximately 27 miles of setback levee, reconstructed levees, cutoff walls, project levee degradates, closure structures, and mitigation planting. Fifteen (15) Board Permits associated USACE Section 408 Permissions were issued between 2005 and 2015 for the major construction activities for this Project. The project was completed in the following four (4) phases:

- Phase 1 - Yuba River South Levee Cutoff Wall (Board Permit No. 17828)
- Phase 2 – Yuba River South Levee Seepage Berms (Board Permit No. 17921)
- Phase 2 – WPIC West Levee Cutoff Wall, Rock Placement, Fill Landside toe ditch and Levee Raise (Board Permit No. 17782)
- Phase 2 – Bear River North Levee Setback Tie-In Levee, Seepage Berm, rock placement (Board Permit No. 17782 & 18123)
- Phase 3 – Bear River North Setback Levee (Board Permit No. 17979)
- Phase 4 – Upper Yuba River South Levee Cutoff Walls and Seepage and Stability Berms (Board Permit No. 18577)
- Phase 4 – Feather River East Levee Cutoff Walls and Seepage and Stability Berms (Board Permit No. 18170 & 18170-Rev)
- Phase 4 – Feather River East Setback Levee with Cutoff Walls, relief wells, and piezometers, and degrading portions of old levee (Board Permit No. 18227 & 18430)

- Phase 4 – Feather River East Levee Erosion Berm (Board Permit No. 18170 & 18170-Rev)
- Phase 4 – Yuba River South Levee Cutoff Wall and Landside Seepage Berm (Board Permit No. 18095 & 18095-Rev)
- Phase 4 – Yuba River South Levee Stability Berm (Board Permit No. 18986)
- Phase 4 – Construction of a drainage berm along Segment 1 of the Feather River East Levee (Board Permit No. 18869)
- Phase 4 – Construction of a toe access corridor along Segment 3 on the Feather River East Levee (Board Permit No 18170-1)

In accordance with the USACE, Sacramento District *Supplement to Standard Operation and Maintenance Manual Sacramento River Flood Control Project, Unit No. 145, East Levee of Feather River, South Levee of Yuba River, Both Levees of W.P.R.R. Intercepting Channel, West Levee of South Dry Creek and North Levee of Bear River* (SSO&M), August 2019, assurances are provided by local interests and the Board. Paragraphs 1-06 through 1-08 state:

1-06 "Assurance of cooperation by local interests is provided by State Legislation, as contained in Chapter 3, Part 2, Division 5, of the State Water Code under paragraph 2-02a of the Standard Manual."

1-07 "Responsibility for operating and maintaining the completed works was officially accepted by the Reclamation Board of the State of California on 18 December 1951 and 2 December 1952, as included in the SSO&M, letters of acceptance, Exhibit E."

1-08 "The name and address of the Superintendent appointed by local interests to be responsible for the continuous inspection, operation and maintenance of the project works shall be furnished to the District Engineer, and in case of any change of Superintendent, the District Engineer shall be so notified."

In accordance with USACE Engineer Regulation (ER) 1110-2-401, "Operation, Maintenance, Repair, Replacement, and Rehabilitation Manual for projects and separable elements managed by project sponsors" the permit applicant, TRLIA, is required to submit specified documents that are outlined in that manual as part of the finalization of the project and ultimate final project closeout. This letter documents completion of these requirements.

Pursuant to 33 USC 408, the USACE approved the Board's requests on RD 784's behalf to alter the SRFCP as part of the Project. This Project was subject to the following Board permit numbers: 17782, 18123, 17979, 17828, 17921, 18095, 18095-Rev, 18577, 18986, 18170, 18170-Rev, 18227, 18430, 18869, and 18170-1. The USACE granted permission to alter the SRFCP, as it had determined that such alteration would not be injurious to the public interest and would not impair the usefulness of the project work. TRLIA substantially completed the project in 2015 with the project certification by seven Professional Engineering companies (MBK Engineers, HDR Engineering, ENGEO, GEI Consultants, MHM Engineering, MWH, and Kleinfelder) and the USACE.

As directed by the USACE, TRLIA and RD 784 submitted a revised *Supplement to Standard Operation and Maintenance Manual*, along with as-built drawings, and construction completion

reports. Board staff reviewed these submittals and determined that the project was constructed in accordance with final (100 percent) plans and specifications, met all Board permit conditions (including all USACE conditions incorporated into the Board permit), and was compliant with the Board's California Code of Regulations, Title 23. On May 29, 2019, Board staff notified the USACE Sacramento District of these determinations.

On August 6, 2019, the USACE Sacramento District informed Board staff that it had completed its review of the TRLIA submittals, and had determined that the improvements were constructed in accordance with the final (100 percent) plans and specifications, accepted the Program as part of the SRFCP, and transmitted the revised Supplement to the Standard O&M Manual and as-built drawings to Board staff. In addition, the USACE officially combined the operation manuals for Unit 145 and 149 into the SSO&M.

Board Resolution 2019-28 (Resolution) includes Board acceptance of operations and maintenance responsibilities from the USACE, and subsequent transfer of those same responsibilities to RD 784. This transmittal includes the enclosed SSO&M, which replaces the previous versions in its entirety, along with the as-built drawings.

If you have any questions, please contact Board staff, Connie Perkins, by phone at (916) 480-5386, or via email at [Constance.PerkinsGutowsky@cvflood.ca.gov](mailto:Constance.PerkinsGutowsky@cvflood.ca.gov).

Sincerely,

Leslie M. Gallagher  
Executive Officer

cc and enclosures: (via electronic file)

Central Valley Flood Protection Board

Mr. Michael Wright, Chief Engineer

Mr. Greg Harvey, Chief Engineer, Plan Implementation and Compliance Branch

Department of Water Resources

Mr. Corey Lasso, Flood Projects Office

Mr. Eric McGrath, Flood Maintenance Office

Mr. Ryan Larson, Chief, Levees and Channels Branch, USACE Sacramento District

Mr. Rick Brown, Board President, Reclamation District 784

Mr. David Read, Trustee, Reclamation District 784

Mr. Paul Brunner, Executive Director, Three River's Levee Improvement Agency

Mr. Ric Reinhardt, MBK Consultants

Reclamation District 784  
January 6, 2020  
Page 4 of 4

Enclosures:

- 1) Board Resolution 2019-28
- 2) Supplement to Standard Operation and Maintenance Manual, Sacramento River Flood Control Project, Unit No. 145 [On file at Board and USACE Sacramento District Offices]
- 3) As-built Drawings [On file at Board and USACE Sacramento District Offices]

## List of CVFPB Permits

CVFPB Permit	CVFPB Board Meeting Date	CVFPB Permit Issue Date	LOCATION	TRLIA PHASE	DESCRIPTION OF WORK	SECTION 408 PERMISSION DATE	COMPLETION DATE
17782 BD	12/17/05	05/19/05	Western Pacific Interceptor Canal West Levee	2	Construction of Cutoff Wall; rock slope protection, Fill of LS Toe Ditch; Levee Raise	N/A	2006
17782 BD	12/17/05	05/19/05	Bear River North Levee	2	Construction of Setback Tie-in Levee; Seepage Berm; Placement of Rock on WS Slope, and set back pump station	N/A	2006
17828 GM	N/A	08/07/04	Yuba River South Levee	1	Construct a 50-ft deep slurry cutoff wall for 2,200 LF (HWY 70 to UPRR)	09/07/04	2004
17921 GM	N/A	07/21/05	Yuba River South Levee	2	Construction of Seepage Berm at 2 sites, 2,500 LF (HWY 70 to UPRR)	07/07/05	2006
17979 BD	09/15/06	03/29/06	Bear River North Levee	3	Construction of Bear River Setback Levee and orchard removal and vegetation planting	06/19/06	2006
18095 GM	N/A	08/24/06	Yuba River South Levee	4	Construction of Cutoff Wall and Seepage Berm (HWY 70 to Simpsons Lane), flatten the waterside slope to 3:1 and to restore the levee crown profile	08/07/06	2006
18095-REV GM	N/A	03/02/07	Yuba River South Levee	4	Extend Construction of Cutoff Wall and Seepage Berm (HWY 70 to 800ft East of Simpsons Lane)	08/07/06	2009
18123 GM	N/A	11/03/06	Bear River North Levee	2	Construction of Additional Seepage Berm	10/03/06	2006

## List of CVFPB Permits

CVFPB Permit	CVFPB Board Meeting Date	CVFPB Permit Issue Date	LOCATION	TRLIA PHASE	DESCRIPTION OF WORK	SECTION 408 PERMISSION DATE	COMPLETION DATE
17782 BD	12/17/05	05/19/05	Western Pacific Interceptor Canal West Levee	2	Construction of Cutoff Wall; rock slope protection, Fill of LS Toe Ditch; Levee Raise	N/A	2006
17782 BD	12/17/05	05/19/05	Bear River North Levee	2	Construction of Setback Tie-in Levee; Seepage Berm; Placement of Rock on WS Slope, and set back pump station	N/A	2006
17828 GM	N/A	08/07/04	Yuba River South Levee	1	Construct a 50-ft deep slurry cutoff wall for 2,200 LF (HWY 70 to UPRR)	09/07/04	2004
17921 GM	N/A	07/21/05	Yuba River South Levee	2	Construction of Seepage Berm at 2 sites, 2,500 LF (HWY 70 to UPRR)	07/07/05	2006
17979 BD	09/15/06	03/29/06	Bear River North Levee	3	Construction of Bear River Setback Levee and orchard removal and vegetation planting	06/19/06	2006
18095 GM	N/A	08/24/06	Yuba River South Levee	4	Construction of Cutoff Wall and Seepage Berm (HWY 70 to Simpsons Lane), flatten the waterside slope to 3:1 and to restore the levee crown profile	08/07/06	2006
18095-REV GM	N/A	03/02/07	Yuba River South Levee	4	Extend Construction of Cutoff Wall and Seepage Berm (HWY 70 to 800ft East of Simpsons Lane)	08/07/06	2009
18123 GM	N/A	11/03/06	Bear River North Levee	2	Construction of Additional Seepage Berm	10/03/06	2006

CVFPB Permit	CVFPB Board Meeting Date	CVFPB Permit Issue Date	LOCATION	TRLIA PHASE	DESCRIPTION OF WORK	SECTION 408 PERMISSION DATE	COMPLETION DATE
18170 BD	06/08/07	08/09/07	Feather River East Levee	4	Construction of Segment 1&3, Cutoff Wall, Stability Berms, Relief Wells, Waterside Levee Slope Blankets	08/03/07	2008
18170-REV BD		07/17/08	Feather River East Levee	4	Construction of Segment 1&3, Cutoff Wall, Relief Wells, Waterside Levee Slope Blankets, and levee crown restoration. Seepage berm in Segment 3	06/12/08	2008
18170-1 BD	11/16/12	07/30/13	Feather River East Levee	4	Construction of Toe Access Corridor in Segment 3 and transplant elderberry and other plants	07/09/13	2013
18227 BD	03/21/08	04/07/08	Feather River East Levee	4	Construction of Segment 2, 5.7-mile-long Setback Levee	12/12/08	2009
18430 BD	07/30/09	08/19/09	Feather River East Levee	4	Degrade Portions of the Segment 2, reconstruct pump station, and provide mitigation for environmental impacts	06/15/09	2009
18577 BD	07/22/10	04/11/11	Upper Yuba River South Levee	4	Construction of Cutoff Wall and Stability Berm (Simpson Lane to Goldfields)	03/24/11	2015
18869	09/27/13	11/24/14	Feather River East Levee	4	Construction of Seepage Berm along Segment 1 on the landside levee slope	11/18/14	2015
18986	04/24/15	05/04/15	Yuba River South Levee	4	Enlarge an existing stability berm along the landside levee slope at a height of approximately 12 feet above the top surface of the existing berm at the 1986 break site.	04/20/15	2015

STATE OF CALIFORNIA - CALIFORNIA NATURAL RESOURCES AGENCY

GAVIN NEWSOM, GOVERNOR

**CENTRAL VALLEY FLOOD PROTECTION BOARD**

3310 El Camino Ave., Ste. 170  
SACRAMENTO, CA 95821  
(916) 574-0609 FAX: (916) 574-0682



May 29, 2019

Colonel David G. Ray, P.E.  
District Commander  
U.S. Army Corps of Engineers, Sacramento District  
1325 J Street  
Sacramento, California 95814

Subject: Three Rivers Levee Improvement Authority, Sacramento River Flood Control  
Project, Units 145 Part 1 and 149.

Dear Colonel Ray:

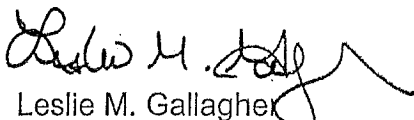
Pursuant to Title 33, USC Section 408 (Section 408), the Central Valley Flood Protection Board (CVFPB) acknowledges that the Three Rivers Levee Improvement Authority (TRLIA) has altered the Sacramento River Flood Control Project (SRFCP), as part of the TRLIA Phased Levee Improvement Program. The alterations to the SRFCP were completed through CVFPB encroachment permit numbers 17782, 18123, 17979, 17828, 17921, 18095, 18095-Rev, 18577, 18986, 18170, 18170-Rev, 18227, 18430, 18869, and 18170-1.

The CVFPB has determined that the local improvements to the SRFCP through the above-mentioned permits have been constructed in accordance with the approved final plans and specifications. Based on this determination, the CVFPB provides assurances that the CVFPB will operate and maintain these levees as part of the SRFCP.

The State of California acting through the Board will accept the altered project for operation and maintenance and hold and save the United States free from damage due to the construction works.

If you have any questions or need further information, please contact Mr. Greg Harvey of my staff at (916) 574-0454 or by email at [greg.harvey@cvflood.ca.gov](mailto:greg.harvey@cvflood.ca.gov).

Sincerely,

  
Leslie M. Gallagher  
Executive Officer

Colonel David G. Ray  
May 29, 2019  
Page 2 of 2

cc: (via electronic file)

Mr. Juan M. Gonzalez, P.E.  
Levees and Channels Branch  
U.S. Army Corps of Engineers

Mr. Paul Brunner, P.E.  
Executive Director  
Three Rivers Levee Improvement Authority

Mr. Robert E. Scarborough, P.E.  
Chief FRR Projects, Section C  
Department of Water Resources



DEPARTMENT OF THE ARMY  
U.S. ARMY CORPS OF ENGINEERS, SACRAMENTO DISTRICT  
1325 J STREET  
SACRAMENTO CA 95814-2922

Executive Office

AUG 06 2019

Ms. Leslie M. Gallagher  
Executive Officer  
Central Valley Flood Protection Board  
3310 El Camino Avenue, Room 170  
Sacramento, CA 95821



Dear Ms. Gallagher:

Pursuant to 33 USC § 408 (Section 408), the U.S. Army Corps of Engineers (USACE) approved your request to alter the Sacramento River Flood Control Project (SRFCP), as part of the Three Rivers Levee Improvement Authority (TRLIA) Phased Levee Improvement Program through fifteen Section 408 Letters of Permission and/or No Objection letters. These projects, implemented by the TRLIA, were the subject of Central Valley Flood Protection Board (CVFPB) encroachment permit numbers 17782, 18123, 17979, 17828, 17921, 18095, 18095-Rev, 18577, 18986, 18170, 18170 Rev, 18227, 18430, 18869, and 18170-1.

Your office subsequently submitted *Addendum to: Supplement to Standard Operation and Maintenance Manual Sacramento River Flood Control Project, Unit No. 145 Part No. 1 and Unit No. 149, Maintenance Area No. 8, Reclamation District 784 Improvements*, Bear River Setback Levee Project Construction Completion Report (CCR) dated May 2007, Construction Documentation Report dated June 2007, Feather River Levee Repair Project Levee Segments 1&3 CCR and five supplemental Addendums dated June 2009 through December 2014, Feather River Levee Repair Project Levee Segment 2 CCR dated May 2010, and Upper Yuba Levee Improvement Project CCR dated March 2013. The Sacramento District has reviewed the above submittals and has determined that the local improvements were constructed in accordance with the final plans and specifications, as approved by USACE under Section 408.

As of the date of this letter, the operation and maintenance manuals for the SRFCP Unit No. 145 and Unit No. 149 are officially combined to form one comprehensive supplement. The need for two supplements was eliminated when maintenance responsibility of Unit No. 149 was transferred from a State Maintenance Area (No. 8) to Reclamation District 784 on July 1, 1974. Additionally, the major levee improvements that were completed between 2004 and 2015 throughout the levee system provided an opportunity to update and merge the two supplements.

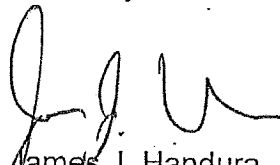
This letter informs you that the improvements were accepted as part of the SRFCP. Therefore, this letter transmits the revised *Supplement to Standard Operation and Maintenance Manual Sacramento River Flood Control Project, Unit No. 145 East Levee of Feather River, South Levee of Yuba River, Both Levees of W.P.R.R. Intercepting Channel, West Levee of South Dry Creek and North Levee of Bear River* (Enclosure 1) and the associated as-built drawings (Enclosure 2).

In accordance with the assurances you provided on May 29, 2019, you are responsible to operate and maintain these levees as part of the SRFCP. This letter of acceptance into the Federal flood control system should not be construed as an endorsement for inclusion of the alterations described above into the National Flood Insurance Program as outlined in Title 44 of the Code of Federal Regulations (CFR) Section 65.10 of the National Flood Insurance Regulations (44 CFR Section 65.10). In addition, this letter of acceptance shall neither be interpreted as a Federal assurance regarding later approval of any project or credit nor shall it commit the United States to any type of reimbursement.

My point of contact for this action is Mr. Ryan Larson, Acting Chief, Levees and Channels Branch. He may be reached by telephone at (916) 557-7568 or by email at [Ryan.T.Larson2@usace.army.mil](mailto:Ryan.T.Larson2@usace.army.mil).

A copy of this letter is being furnished to Mr. Paul Brunner, Executive Director, Three Rivers Levee Improvement Authority, 1114 Yuba Street, Suite 218, Marysville, California 95901 and Steven Fordice, General Manager, Reclamation District 784, 1594 Broadway Street, Arboga, California 95961.

Sincerely,



James J. Handura  
Colonel, U.S. Army  
Commander and District Engineer

Enclosures

OPERATION, MAINTENANCE, REPAIR, REPLACEMENT, AND  
REHABILITATION AGREEMENT BETWEEN  
The Central Valley Flood Protection Board  
AND  
Reclamation District No. 784  
AND  
Three Rivers Levee Improvement Authority  
FOR  
The Feather River Levee Improvement Project and  
The Upper Yuba River Levee Improvement Project

This Operation, Maintenance, Repair, Replacement, and Rehabilitation Agreement ("OMRR&R Agreement") is entered into by and among the State of California ("State"), acting by and through the Central Valley Flood Protection Board, or any successor thereto, ("Board"), Reclamation District No. 784 ("Local Maintaining Agency"), and Three Rivers Levee Improvement Authority ("Funding Recipient") on this 26<sup>th</sup> day of August, 2011 in view of the following circumstances:

1. The Feather River Levee Improvement Project and the Upper Yuba River Levee Improvement Project are *modifications of the Sacramento River Flood Control Project which was authorized by Congress on March 1, 1917, and amended on May 15, 1928, August 26, 1937, August 18, 1941, August 17, 1954, and July 14, 1960.*
2. State funding has been provided for the Early Implementation Program ("EIP") Project:
  - The voters of California approved Propositions IE and 84 on November 7, 2006, making available bond funds for flood control work and other purposes.
  - The State, acting by and through the Department of Water Resources ("Department"), has solicited applications for early implementation funding for its State-Federal Flood Control System Modifications Program.
  - As a result, two Funding Agreements have been signed between the State of California Department of Water Resources and the Three Rivers Levee Improvement Authority (referred to herein as Funding Recipient) for the Feather River Levee Improvement Project and the Upper Yuba River Levee Improvement Project (collectively the "Funding Agreement").
  - The Funding Agreement provides that the Funding Recipient shall be responsible for construction, operation, maintenance, repair, replacement, and rehabilitation ("OMRR&R") of the Feather River Levee Improvement Project and the Upper Yuba River Improvement Project (collectively the "EIP Project"). Under this OMRR&R Agreement the Board will oversee OMRR&R for the EIP Project for the State, as part of the State Plan of Flood Control.
  - Under the Funding Agreement the Funding Recipient may agree to assume the responsibility of the Local Maintaining Agency as set out in this OMRR&R Agreement or may agree with a Local Maintaining Agency that it shall assume responsibility for OMRR&R of the EIP Project, provided that the Funding Recipient shall seek to assume responsibility for OMRR&R if for any reason the Local Maintaining Agency fails to perform under this OMRR&R Agreement.
3. It is not expected that the federal government will provide funding for the EIP Project at this time, but in anticipation that federal funds may become available eventually:

- The Funding Agreement requires the Funding Recipient to seek credit for the expenditures made under the Funding Agreement from the federal government, acting by and through the U.S. Army Corps of Engineers ("Corps"), and to enter into agreements necessary to obtain credit or reimbursement from the Corps.
  - The parties agree that this OMRR&R Agreement may be superseded by one or more agreements acceptable to the Corps and the Board that gives satisfactory assurances to the federal government and the Board that the required local cooperation will be furnished in connection with the EIP Project.
4. The Local Maintaining Agency agrees that it already has responsibility for OMRR&R for existing portions of the Project (as hereinafter defined) which the State contends arises under California Water Code Section 12642 which provides that in all cases where the Federal Government does not maintain and operate projects, it is the responsibility and duty of the county, city, state agency, or public district affected to maintain and operate flood control and other works, after completion, and hold and save the State and the United States free from damages.
  5. The Board has agreed to enter into this OMRR&R Agreement on the condition that the Local Maintaining Agency provides the Board with the assurances specified in this OMRR&R Agreement that Local Maintaining Agency will be responsible for OMRR&R of the EIP Project upon its completion; and will, as described below, hold and save the federal government, State, their representatives, officers, directors, and employees, as well as but not limited to their successors and assigns, free and harmless from any and all claims and damages arising from OMRR&R of the EIP Project.
  6. The Board and the Local Maintaining Agency have agreed that this OMRR&R Agreement will set forth not only their agreement with respect to OMRR&R for the EIP Project, but also for all of the federally and State authorized flood facilities related to the EIP Project that are within the Local Maintaining Agency's boundaries.
  7. The Board, Funding Recipient, and the Local Maintaining Agency understand that certain mitigation features associated with the EIP Project have been constructed by Funding Recipient and, as described in Section I.D.(4) below, Funding Recipient, not Local Maintaining Agency, has the responsibility for OMRR&R of these features.

NOW, THEREFORE, IT IS HEREBY AGREED:

For purposes of this OMRR&R Agreement, the terms below are defined as indicated:

**"Board:"** The State of California Central Valley Flood Protection Board or any successor thereto.

**"Corps:"** The United States Army Corps of Engineers.

**"Department:"** The State of California Department of Water Resources.

**"EIP Project:"** The project described in the Overall Work Plans described in the Funding Agreement.

**"Functional Portion of the EIP Project:"** A completed portion of the EIP Project to be constructed under the Overall Work Plan which is determined by the Board to be suitable to operate and maintain in advance of completion of construction of the entire EIP Project.

**"Funding Agreement:"** Collectively the two agreements between the State of California Department of Water Resources and the Three Rivers Levee Improvement Authority for (1) the Feather River Levee Improvement Project dated April 25, 2008 as amended March 25, 2010 and (2) the Upper Yuba River Levee Improvement Project dated October 20, 2009.

**"Funding Recipient:"** The Three Rivers Levee Improvement Authority, which is the signatory to the Funding Agreement.

**"Local Maintaining Agency:"** RD 784, which is agency that will assume responsibility for OMRR&R for any Functional Portion of the EIP Project, the EIP Project, and the Project.

**"OMRR&R:"** Operation, maintenance, repair, replacement, and rehabilitation of the Project.

**"OMRR&R Agreement:"** This agreement between the State of California Central Valley Flood Protection Board and Reclamation District No. 784 ("Local Maintaining Agency") for OMRR&R of the Feather River Levee Improvement Project and the Upper Yuba River Levee Improvement Project.

**"Overall Work Plan:"** The plan described in the Funding Agreement in Paragraph 22(a), as amended, and Exhibit A-1, as amended.

**"Post Construction Performance Reports:"** The reports required by Funding Agreement Paragraph 22(e), as amended.

**"Project:"** All of the federally and State authorized flood facilities to the extent to which they are within the area bounded by the Yuba River, the Feather River, the Bear River, and the Western Pacific Interceptor Canal; provided, that it shall not include any Federally-constructed facilities for which the State and/or Local Maintaining Agency have not previously provided assurances or accepted for OMRR&R.

**"Project Site:"** The location of the Project.

**"Standard Operation and Maintenance Manual:"** A document prepared by the Local Maintaining Agency and submitted to the State for review, comment and approval that will govern the operation, maintenance, repair, replacement and rehabilitation of the Project. This manual will include all manuals related to the Project and facilities covered by this OMRR&R agreement, including those prepared by the Corps and/or Board for flood, ecosystem, habitat, mitigation or other purposes and any other such manuals.

**"State:"** The State of California, acting by and through the Board.

**"State Plan of Flood Control:"** The state and federal flood control works, lands, programs, plans, conditions, and mode of maintenance and operations described in Cal. Pub. Res. Code § 5096.805(j).

#### SECTION I: Obligations of the Local Maintaining Agency and Funding Recipient.

##### A. General Obligations. The Local Maintaining Agency agrees to the following:

1. To perform OMRR&R for the Project, including all mitigation features of the Project, without limitation, in accordance with the Project design specifications, environmental permits, environmental impact reports, regulations, and directions prescribed by the State, all without any cost to the State. The duty of the Local Maintaining Agency to perform OMRR&R for all Project features shall be performed in a manner that does not diminish the flood protection afforded by or jeopardize the structural integrity of the Project and the flood control system of which the Project is part. The duties of the Local Maintaining Agency pursuant to this paragraph are described further in Section I-B below.
2. To defend, indemnify, hold and save the federal government and the State, to the extent allowed by law, their representatives, officers, directors, agents, and employees, as well as but not limited to their successors and assigns free and harmless, to the extent permitted by law, from any and all liability for any claims and damages (including inverse condemnation) that may arise out of this OMRR&R Agreement, including but not limited

to any claims or damages arising from the performance of OMRR&R (including construction associated with such performance) under this Agreement.

B. Specific Obligations to Operate, Maintain, Repair, Replace, and Rehabilitate of the Local Maintaining Agency

1. The Local Maintaining Agency hereby accepts responsibility for OMRR&R of the Project. The Local Maintaining Agency agrees that it will be responsible for OMRR&R of the Project as further explained in: (1) the Standard Operation and Maintenance Manual for the Project and (2) any applicable Supplement to the Standard Operation and Maintenance Manual for the Project.
2. The Local Maintaining Agency agrees to cooperate in the Funding Recipient's development of a Standard Operation and Maintenance Manual for the Project as required by Board permits issued to the Funding Recipient for the Project. The Standard Operation and Maintenance Manual for the EIP Project or Functional Portion of the EIP Project may be a stand-alone document or an amendment to the Standard Operation and Maintenance Manual for the Project as directed by the Board. The Local Maintaining Agency acknowledges that changes to the Standard Operation and Maintenance Manual may be made by the State and the Corps before the document becomes final. The State may make reasonable changes but shall consult with Local Maintaining Agency prior to making such changes. The Local Maintaining Agency shall be required to update the Standard Operation and Maintenance Manual as may be necessary or as required by the Central Valley flood Protection Board (CVFPB) and shall make a copy available to the State within three (3) days after the State so requests. The Local Maintaining Agency shall be responsible for OMRR&R in accordance with any revised version of the Standard Operation and Maintenance Manual for the Project or any Supplement to the Standard Operation and Maintenance Manual.
3. The Local Maintaining Agency hereby gives State the right to enter, at reasonable times and in a reasonable manner, upon the Project Site and land which it owns or controls for access to the Project Site for the purpose of: (i) conducting subsequent inspections to verify that the Local Maintaining Agency is complying with its obligations under this OMRR&R Agreement; and (ii) operating, maintaining, repairing, replacing, or rehabilitating any part of the Project located at or accessible by the Project Site in conjunction with any present or future flood control plan if in the reasonable judgment of State the Local Maintaining Agency fails to comply with its obligations under this OMRR&R Agreement. In the event the State assumes title to any of the land to which the Local Maintaining Agency needs access to fulfill the obligations set forth in the paragraph, the State grants an Irrevocable license to the Local Maintaining Agency to enter the land to fulfill its obligations under this OMRR&R Agreement.
4. If the Local Maintaining Agency has failed or refused to perform the obligations set forth in this OMRR&R Agreement or the requirements of the manuals mentioned above, the State may take appropriate actions including proceedings to establish a maintenance area under Water Code Section 12878 *et seq.*

If the Local Maintaining Agency has failed or refused to perform the obligations set forth in this OMRR&R Agreement or the requirements of the manuals mentioned above, and for any reason the State is not able to take appropriate actions under these provisions of Water Code Section 12878 *et seq.*, then the State may take appropriate actions under this OMRR&R Agreement as follows: If the failure or refusal constitutes, in the sole discretion of the State, a threat to the continued ability of the Project or functional portion thereof to perform in a manner necessary to provide its designed level of flood protection, then the State may itself perform the necessary work or do so by contract. The State may in its sole discretion develop a work plan and present it to the Local Maintaining

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Agreement No. \_\_\_\_\_

Agency with instructions that if the Local Maintaining Agency does not agree to carry out the work plan within the time specified in the work plan, the State will perform the necessary work or do so by contract. The Local Maintaining Agency will reimburse the State for the costs of performing such work in accordance with the procedures set forth in this OMRR&R Agreement. No completion, operation, maintenance, repair, replacement, or rehabilitation by the State shall operate to relieve the Local Maintaining Agency of responsibility to meet the Local Maintaining Agency's obligations as set forth in this OMRR&R Agreement, or to preclude the State from pursuing any other remedy at law or equity to ensure faithful performance pursuant to this OMRR&R Agreement.

5. The State agrees to use its best efforts to provide notice to the Funding Recipient of any determination by the State that the Local Maintaining Agency has failed or refused to perform under this Agreement, as described in Subsection I.B.4, so as to allow the Funding Recipient an opportunity to perform the activity claimed necessary by the State prior to the State taking the remedial actions specified in Subsection I.B.4.

C. Additional Obligations of the Local Maintaining Agency:

1. The Local Maintaining Agency shall annually review and, if appropriate or requested by the State, update the safety plan for the EIP Project prepared pursuant to the Funding Agreement or required by Cal. Water Code § 9650. The Local Maintaining Agency agrees to use best efforts to ensure that the updated safety plan is integrated into any other local agency emergency plan and is coordinated with the state emergency plan.
2. No later than June 30 of each calendar year the Local Maintaining Agency shall provide an annual Post Construction Performance Report to the Department, which may be included as part of the report provided pursuant to Water Code Section 9140.
  - (a) The Post Construction Performance Report shall generally use the following format:
    - Summary of the operations of the EIP Project;
    - Brief discussion of the EIP Project benefits;
    - Brief comparison and explanations for any differences between the expected versus actual EIP Project success in meeting the goals identified in the original State-Federal Flood Control System Modification Program (Early Implementation Projects) Grant Application;
    - Summary of costs and any additional costs and/or benefits deriving from the EIP Project; and
    - Any additional information relevant to or generated by the continued operation of the EIP Project, including any maintenance issues.
  - (b) If the Local Maintaining Agency is not the same as the Funding Recipient, the Local Maintaining Agency represents that it has made arrangements with the Funding Recipient to obtain any information needed from the Funding Recipient in order to prepare this report.
  - (c) The Department in its sole determination may modify these reporting requirements as needed to ensure that it has adequate information with which to perform its responsibilities.

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Agreement No. \_\_\_\_\_

3. Local Maintaining Agency shall provide Information to the Board as follows:
- (a) No later than June 30 of each calendar year the Local Maintaining Agency shall certify that it has reviewed the Standard Operations and Maintenance Manual and that either: (1) no updates are needed to the Standard Operation and Maintenance Manual; or (2) the Standard Operation and Maintenance Manual has been updated.
  - (b) If requested to do so by the Board, the Local Maintaining Agency shall provide copies to the Board of the operation and maintenance reports required pursuant to AB 5 (Wolk), 2007 Cal. Stat. 366 (codified at Cal. Water Code § 9140(a)) that pertain to the Project.
  - (c) The Board in its sole determination may modify these reporting requirements as needed to ensure that it has adequate information with which to perform its responsibilities.

D. Obligations of the Funding Recipient: Funding Recipient shall have no obligations other than those provided in this Section I.D.

1. The Funding Recipient agrees to defend, indemnify, hold and save the federal government and the State, to the extent allowed by law, their representatives, officers, directors, agents, and employees, as well as but not limited to their successors and assigns free and harmless, to the extent permitted by law, from any and all liability for any claims and damages (including inverse condemnation) that may arise out of the construction or operation and maintenance of the EIP Project by the Funding Recipient.
2. Other than its independent obligations under this Agreement, Funding Recipient shall have no obligation to remedy any failures or refusals by the Local Maintaining Agency identified by the State pursuant to Section I.B.4. of this Agreement. However, if the Funding Recipient takes action to remedy such failures or refusals, it agrees to (i) act in a manner consistent with applicable rules, regulations, and guidance adopted by the State and the Government, and (ii) defend, indemnify, hold and save the federal government and the State, to the extent allowed by law, their representatives, officers, directors, agents, and employees, as well as but not limited to their successors and assigns free and harmless, to the extent permitted by law, from any and all liability for any claims and damages (including inverse condemnation) that may arise out of Funding Recipient's performance to remedy the failure or refusal.
3. Funding Recipient acknowledges that in addition to the actions it may take pursuant to this Section I.D., it has independent obligations to operate and maintain certain portions of the Project pursuant to encroachment permits that have been and will be issued by the Board to the Funding Recipient. Consistent with those obligations, the Funding Recipient hereby restates its responsibility for OMRR&R of the EIP Project. It agrees that it will be responsible for OMRR&R of the EIP Project as further explained in: (1) the Standard Operation and Maintenance Manual which covers the EIP Project and (2) any applicable Supplement to the Standard Operation and Maintenance Manual which covers the EIP Project.
4. In connection with the permitting and construction of the EIP Project, Funding Recipient has constructed various mitigation features to comply with the resources statutes in place under Federal and California law. Obligations for the OMRR&R of these various features was accepted by Funding Recipient as a result of various permissions granted by Federal and California agencies. While Funding Recipient may contract with the Local Maintaining Agency to perform the required OMRR&R for these features, the parties agree that the legal obligation to ensure OMRR&R for these features rests with the Funding Recipient and nothing in this Agreement is intended to amend or abrogate those

obligations. A list of the mitigation features approved as of the date of this Agreement is as follows:

- Messick Lake/Drainage Swale Wetlands Mitigation – Pursuant to a 404 Permit issued by the U.S. Army Corps of Engineers and Encroachment Permit # 18430 BD.
  - Feather River Elderberry Transplant – Pursuant to Fish and Wildlife Service permission, a 404 Permit issued by the U.S. Army Corps of Engineers, and Encroachment Permit 18637 BD.
  - Feather River GGS Offsite Mitigation (Gilsiser Slough) – Pursuant to Fish and Wildlife Service permission.
  - Feather Setback Area – Pursuant to Encroachment Permit # 18430 BD.
  - Native American Cultural site (Yuba-5) – Pursuant to agreement with the State Historic Preservation Office, a 404 permit issued by the U.S. Army Corps of Engineers, and Encroachment Permit # 18430 BD.
  - Native American Cultural site (Yuba-1677) – Pursuant to agreement with the State Historic Preservation Office, a 404 permit issued by the U.S. Army Corps of Engineers, and Encroachment Permit # 18227 BD.
  - Anderson Mitigation Site – Pursuant to Fish and Wildlife Service permission and Encroachment Permit # 18642 BD.
5. Funding Recipient agrees that the obligations stated in Section 1.D. of this OMRR&R Agreement are material obligations as that term is used on page 10 of the Joint Exercise of Powers Agreement by and between the County of Yuba and Reclamation District No. 784 which created the Funding Recipient.

#### SECTION II: Hazardous Substances

The Local Maintaining Agency acknowledges State may incur obligations with respect to hazardous substances regulated under the Comprehensive Environmental Response, Compensation and Liability Act (CERCLA), 42 U.S.C. §§ 9601-9675; California Hazardous Substances Account Act, Calif. Health & Safety Code §§ 25310 *et seq.* or other statutes or regulations (collectively referred to as "state and federal Hazardous Substances Laws") on lands necessary for Project construction and OMRR&R to the extent the Local Maintaining Agency fails to comply with its obligations under this OMRR&R Agreement. The Local Maintaining Agency agrees:

- A. That in the event that the Local Maintaining Agency discovers through an environmental investigation or other means that any lands, easements, or rights of way that have been acquired or provided for the Project contain reportable quantities of hazardous substances regulated under CERCLA and/or other state and federal Hazardous Substances Laws, the Local Maintaining Agency shall promptly notify the State of that discovery if it can be reasonably anticipated that the discovery of reportable quantities of hazardous substances will require Local Maintaining Agency to incur response costs in excess of \$10,000.
- B. That in the event reportable quantities of hazardous substances regulated under CERCLA and/or other state and federal Hazardous Substances Laws have been found, the Local Maintaining Agency shall initiate and complete any and all necessary response and cleanup activity required under CERCLA and/or other state and federal Hazardous Substances Laws, which shall include any studies and investigations necessary to determine the appropriate response to the

contamination. Payment for the costs of such necessary response and cleanup activity as required under CERCLA and/or other state and federal Hazardous Substances Laws shall be made by the Local Maintaining Agency. In the event that the Local Maintaining Agency fails to provide the funds necessary for response and cleanup activity required under CERCLA and/or other state and federal Hazardous Substances Laws or to otherwise discharge the Local Maintaining Agency's responsibilities under this Paragraph B, then the State may perform the necessary response and cleanup activity, and the Local Maintaining Agency shall reimburse the State in accordance with the procedures set out in this OMRR&R Agreement. If the State performs the necessary response and cleanup activity required under CERCLA and/or other state and federal Hazardous Substances Laws, the State shall consult with the Local Maintaining Agency concerning the selection of the person(s) to perform the work, the amount of money to be spent on the work, the scope of the work, and any other aspect of response and cleanup activity.

- C. That the Local Maintaining Agency shall consult with the State in order to ensure that responsible persons under CERCLA and/or other state and federal Hazardous Substances Laws ultimately bear all necessary response and cleanup costs as defined in CERCLA and/or other state and federal Hazardous Substances Laws.
- D. That the Local Maintaining Agency shall operate, maintain, repair, replace, and rehabilitate the Project in a manner that will control and minimize the release or threatened release of hazardous substances regulated under CERCLA and/or other state and federal Hazardous Substances Laws on lands necessary for Project construction, operation, maintenance, repair, replacement, or rehabilitation.
- E. That in the event that the State, their representatives, officers, directors, employees, as well as but not limited to their successors and assigns, are found to be liable under CERCLA and/or other state and federal Hazardous Substances Laws for the release or threatened release of hazardous substances arising out of the operation, maintenance, repair, replacement, or rehabilitation of the Project, the Local Maintaining Agency shall indemnify and hold the State, their representatives, officers, directors, employees, as well as but not limited to their successors and assigns, harmless from any response or cleanup costs for which the State, their representatives, officers, directors, employees, as well as but not limited to their successors and assigns, may be found to be liable under CERCLA and/or other state and federal Hazardous Substances Laws.
- F. No decision made or action taken pursuant to any provision of this Section of the Project OMRR&R Agreement shall relieve any responsible person from any liability that may arise under CERCLA and/or other state and federal Hazardous Substances Laws, nor shall such decision or action be considered a waiver by the State or the Local Maintaining Agency of any right to seek from any responsible person as defined by CERCLA and/or other state and federal Hazardous Substances Laws the recovery, contribution of, or indemnification from costs incurred by the State or the Local Maintaining Agency for response or cleanup activity required under CERCLA and/or other state and federal Hazardous Substances Laws, nor shall such decision or action be considered a waiver by the State of any other right or remedy provided by law.

### SECTION III: Authorization for Delegation or Subcontracting

The Local Maintaining Agency may delegate or subcontract its responsibilities under this OMRR&R Agreement. In performing the obligations called for in this OMRR&R Agreement, the Local Maintaining Agency shall notify the State when it initially retains, employs, or uses any agencies or firms to perform work that is material to successful execution of the duties of the Local Maintaining Agency under this OMRR&R agreement. The Local Maintaining Agency shall be responsible for all work to be performed under the contract, including any delegated work. The State shall have the right to ask that any services for this OMRR&R Agreement provided by any subcontractor be terminated if its performance is unsatisfactory.

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Agreement No. \_\_\_\_\_

Payment for services rendered by subcontractors shall be made entirely by the Local Maintaining Agency; the State shall not have any responsibility for making any payments to the subcontractors for any services they may render in connection with this OMRR&R Agreement.

#### SECTION IV: Procedures for Reimbursing the State

To the extent Local Maintaining Agency fails to fulfill its obligations under this Agreement, the State may perform such obligations and bill the Local Maintaining Agency accordingly. In such circumstances, the State shall provide an invoice to the Local Maintaining Agency for the costs of performing the work. The Local Maintaining Agency agrees, subject to compliance with applicable state law, to reimburse the State by promptly paying any such invoices within thirty days.

#### SECTION V: Disputes

Before any party to the OMRR&R Agreement may bring suit in any court concerning an issue relating to this OMRR&R Agreement, that party must first seek in good faith to resolve the issue through negotiation or other forms of nonbinding alternative dispute resolution mutually acceptable to all parties.

#### SECTION VI: Obligation of Future Appropriations

The parties agree that nothing herein shall constitute, or be deemed to constitute, an obligation of future appropriations by the Legislature of the State of California.

#### SECTION VII: Term of Agreement; Amendment

The effective date of this OMRR&R Agreement is the date it is signed by all parties. The OMRR&R Agreement will continue in full force and effect unless terminated or amended upon written consent of all parties.

The parties acknowledge that in order to obtain federal credits or reimbursement for this Project, it may be necessary to amend this OMRR&R Agreement as required by the U.S. Army Corps of Engineers. The parties agree that they will not unreasonably withhold consent for any amendments necessary to obtain federal credits or reimbursement.

#### SECTION VIII: Notices

All notices, requests, demands, and other communications required or permitted to be given under this OMRR&R Agreement shall be deemed to have been duly given if in writing and delivered personally or mailed by first class (postage pre-paid), registered, or certified mail, as follows:

If to the Local Maintaining Agency:  
Reclamation District No. 784  
ATTN: General Manager  
1594 Broadway St.  
Arboga, CA 95961

If to the Board:  
Central Valley Flood Protection Board  
ATTN: Executive Officer  
3310 El Camino Avenue, Suite LL40  
Sacramento, CA 95821

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4600008654

Agreement No. \_\_\_\_\_

If to the Funding Recipient:  
Three Rivers Levee Improvement Authority  
ATTN: Executive Director  
1114 Yuba Street, Suite 218  
Marysville, California 95901-5273

A party may change the address to which such communications are to be directed by giving written notice to the other party in the manner provided in this section.

Any notice, request, demand, or other communication made pursuant to this section shall be deemed to have been received by the addressee at such time as it is personally delivered or seven calendar days after it is mailed, as the case may be.

#### SECTION IX: Standard Conditions

This OMRR&R Agreement incorporates by reference the standard conditions that are included in Attachment A to this OMRR&R Agreement and shall also apply to Funding Recipient in regard to its obligations under this Agreement.

#### SECTION X: Authority

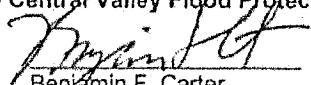
Both the Local Maintaining Agency and the Funding Recipient have provided a copy of a resolution adopted by its governing body designating a representative to execute this OMRR&R Agreement. This resolution is substantially the same as the draft resolution provided in Attachment B to this OMRR&R Agreement.

IN WITNESS WHEREOF, the parties hereto have executed this OMRR&R Agreement.

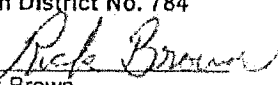
The Central Valley Flood Protection Board

Reclamation District No. 784

By

  
Benjamin F. Carter  
President

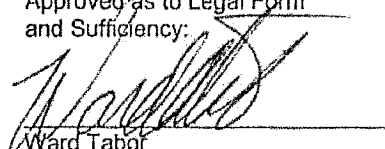
By

  
Rick Brown  
RD 784 President


Date: AUGUST 26, 2011

Date: 8/18/11

Approved as to Legal Form  
and Sufficiency:

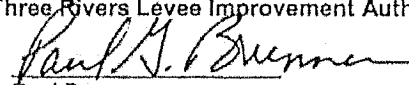
  
Ward Tabor  
Assistant Chief Counsel

Approved as to Legal Form  
and Sufficiency:

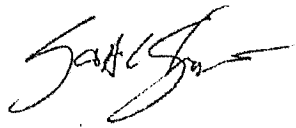
  
Carl Lindmark  
RD 784 Legal Counsel

The Three Rivers Levee Improvement Authority

By

  
Paul Brunner  
Executive Director

Date: 8/12/2011



Approved as to Legal Form  
and Sufficiency:

\_\_\_\_\_  
Scott Shapiro, General Counsel

## Attachment A

## STANDARD CONDITIONS

1. **GOVERNING LAW:** This OMRR&R Agreement is governed by and shall be interpreted in accordance with the laws of the State of California.
2. **TIMELINESS:** Time is of the essence in this OMRR&R Agreement.
3. **AMENDMENT:** This OMRR&R Agreement may be amended at any time by mutual agreement of the Parties, except insofar as any proposed amendments are in any way contrary to applicable law. Requests by the Local Maintaining Agency for amendments must be in writing stating the amendment request and the reason for the request. State shall have no obligation to agree to an amendment.
4. **SUCCESSORS AND ASSIGNS:** This OMRR&R Agreement and all of its provisions shall apply to and bind the successors and assigns of the parties. No assignment or transfer of this OMRR&R Agreement or any part thereof, rights hereunder, or interest herein by the Local Maintaining Agency shall be valid unless and until it is approved by State and made subject to such reasonable terms and conditions as State may impose.
5. **INSPECTION OF BOOKS, RECORDS, AND REPORTS:** During regular office hours, each of the parties hereto and their duly authorized representatives shall have the right to inspect and to make copies of any books, records, or reports of either party pertaining to this OMRR&R Agreement or matters related hereto. Each of the parties hereto shall maintain and shall make available at all times for such inspection accurate records of all its costs, disbursements, and receipts with respect to its activities under this OMRR&R Agreement. Failure or refusal by Local Maintaining Agency to comply with this provision shall be considered a breach of this OMRR&R Agreement, and State may take any other action it deems necessary to protect its interests, after complying with paragraph V of the OMRR&R Agreement.
6. **PROHIBITION AGAINST DISPOSAL OF EIP PROJECT WITHOUT STATE PERMISSION:** The Local Maintaining Agency shall not sell, abandon, lease, transfer, exchange, mortgage, hypothecate, or encumber in any manner whatsoever all or any portion of any real or other property necessarily connected or used in conjunction with the EIP Project, without prior permission of State. The Local Maintaining Agency shall not take any action, including but not limited to actions relating to user fees, charges, and assessments that could adversely affect the ability of the Local Maintaining Agency to meet its obligations under this OMRR&R Agreement, without prior written permission of State. State may require that the proceeds from the disposition of any real or personal property acquired, reimbursed or credited with State funds be remitted to State.
7. **NO THIRD PARTY RIGHTS:** The parties to this OMRR&R Agreement do not intend to create rights in, or grant remedies to, any third party as a beneficiary of this OMRR&R Agreement, or of any duty, covenant, obligation or undertaking established herein.
8. **OPINIONS AND DETERMINATIONS:** Where the terms of this OMRR&R Agreement provide for action to be based upon, judgment, approval, review, or determination of either party hereto, such terms are not intended to be and shall never be construed as permitting such opinion, judgment, approval, review, or determination to be arbitrary, capricious, or unreasonable.
9. **SUIT ON OMRR&R AGREEMENT:** Each of the parties hereto may sue and be sued with respect to this OMRR&R Agreement.
10. **REMEDIES NOT EXCLUSIVE:** The use by either party of any remedy specified herein for the enforcement of this OMRR&R Agreement is not exclusive and shall not deprive the party using such remedy of, or limit the application of, any other remedy provided by law.

11. **SEVERABILITY:** Should any portion of this OMRR&R Agreement be determined to be void or unenforceable, such shall be severed from the whole and the OMRR&R Agreement shall continue as modified.
12. **WAIVER OF RIGHTS:** None of the provisions of this OMRR&R Agreement shall be deemed waived unless expressly waived in writing. It is the intention of the parties hereto that from time to time either party may waive any of its rights under this OMRR&R Agreement unless contrary to law. Any waiver by either party of rights arising in connection with the OMRR&R Agreement shall not be deemed to be a waiver with respect to any other rights or matters, and such provisions shall continue in full force and effect.
13. **TERMINATION FOR CAUSE:** The State may terminate this OMRR&R Agreement should Local Maintaining Agency fail to perform the requirements of this OMRR&R Agreement at the time and in the manner herein provided or in the event of a default by the Funding Recipient under paragraph 20 of the Funding Agreement.
14. **INDEPENDENT CAPACITY:** The Local Maintaining Agency, and the agents and employees of the Local Maintaining Agency, in the performance of the OMRR&R Agreement, shall act in an independent capacity and not as officers, employees, or agents of the State.
15. **CONFLICT OF INTEREST**
  - a) **Current State Employees:** No State officer or employee shall engage in any employment, activity, or enterprise from which the officer or employee receives compensation or has a financial interest and which is sponsored or funded by any State agency, unless the employment, activity, or enterprise is required as a condition of regular State employment. No State officer or employee shall contract on his or her own behalf as an independent contractor with any State agency to provide goods or services.
  - b) **Former State Employees:** For the two-year period from the date he or she left State employment, no former State officer or employee may enter into a contract in which he or she engaged in any of the negotiations, transactions, planning, arrangements, or any part of the decision-making process relevant to the contract while employed in any capacity by any State agency. For the twelve-month period from the date he or she left State employment, no former State officer or employee may enter into a contract with any State agency if he or she was employed by that State agency in a policy-making position in the same general subject area as the proposed contract within the twelve-month period prior to his or her leaving State service.
  - c) **Employees of the Local Maintaining Agency:** Employees of the Local Maintaining Agency shall comply with all applicable provisions of law pertaining to conflicts of interest, including but not limited to any applicable conflict of interest provisions of the California Political Reform Act, Cal. Gov't Code § 87100 *et seq.*
16. **WORKERS' COMPENSATION:** The Local Maintaining Agency affirms that it is aware of the provisions of Section 3700 of the California Labor Code, which requires every employer to be insured against liability for workers' compensation or to undertake self-insurance in accordance with the provisions of that code, and Local Maintaining Agency affirms that it will comply with such provisions before commencing the performance of the work under this OMRR&R Agreement and will make its contractors and subcontractors aware of this provision.
17. **AMERICANS WITH DISABILITIES ACT:** By signing this OMRR&R Agreement, the Local Maintaining Agency assures State that it complies with the Americans with Disabilities Act (ADA) of 1990, (42 U.S.C., 12101 *et seq.*), which prohibits discrimination on the basis of disability, as well as all applicable regulations and guidelines issued pursuant to the ADA.

18. **NONDISCRIMINATION CLAUSE:** During the performance of this OMRR&R Agreement, the Local Maintaining Agency and its subcontractors shall not unlawfully discriminate, harass, or allow harassment against any employee or applicant for employment because of sex, race, color, ancestry, religious creed, national origin, physical disability (including HIV and AIDS), mental disability, medical condition (cancer), age (over 40), marital status, and denial of family care leave. The Local Maintaining Agency and subcontractors shall insure that the evaluation and treatment of their employees and applicants for employment are free from such discrimination and harassment. The Local Maintaining Agency and subcontractors shall comply with the provisions of the Fair Employment and Housing Act (Gov. Code §12990 (a-f) et seq.) and the applicable regulations promulgated thereunder (California Code of Regulations, Title 2, Section 7285 et seq.). The applicable regulations of the Fair Employment and Housing Commission implementing Government Code Section 12990 (a-f), set forth in Chapter 5 of Division 4 of Title 2 of the California Code of Regulations, are incorporated into this Agreement by reference and made a part hereof as if set forth in full. The Local Maintaining Agency and its subcontractors shall give written notice of their obligations under this clause to labor organizations with which they have a collective bargaining or other agreement.

The Local Maintaining Agency shall include the nondiscrimination and compliance provisions of this clause in all subcontracts to perform work under the OMRR&R Agreement.

19. **DRUG-FREE WORKPLACE CERTIFICATION**

**Certification of Compliance:** By signing this OMRR&R Agreement, the Local Maintaining Agency, its contractors or subcontractors hereby certify, under penalty of perjury under the laws of State of California, compliance with the requirements of the Drug-Free Workplace Act of 1990 (Government Code 8350 et seq.) and, if such Act applies to the Local Maintaining Agency, has or will provide a drug-free workplace by taking the following actions:

- a) Publish a statement notifying employees, contractors, and subcontractors that unlawful manufacture, distribution, dispensation, possession, or use of a controlled substance is prohibited and specifying actions to be taken against employees, contractors, or subcontractors for violations, as required by Government Code Section 8355(a)(1).
- b) Establish a Drug-Free Awareness Program, as required by Government Code Section 8355(a)(2) to inform employees, contractors, or subcontractors about all of the following:
  - 1. The dangers of drug abuse in the workplace,
  - 2. Local Maintaining Agency's policy of maintaining a drug-free workplace,
  - 3. Any available counseling, rehabilitation, and employee assistance programs, and
  - 4. Penalties that may be imposed upon employees, contractors, and subcontractors for drug abuse violations.
- c) Provide as required by Government Code Sections 8355(a)(3), that every employee, contractor, and/or subcontractor who works under this OMRR&R Agreement:
  - 1. Will receive a copy of Local Maintaining Agency's drug-free policy statement, and
  - 2. Will agree to abide by terms of Local Maintaining Agency's condition of employment, contract or subcontract.

**Suspension of Payments:** This OMRR&R Agreement may be subject to suspension of payments or termination, or both, and Local Maintaining Agency may be subject to debarment if the State determines that:

- a) The Local Maintaining Agency, its contractors, or subcontractors has made a false certification, or

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Agreement No. \_\_\_\_\_

- b) The Local Maintaining Agency, its contractors, or subcontractors violates the certification by failing to carry out the requirements noted above.
20. UNION ORGANIZING: The Local Maintaining Agency, by signing this OMRR&R Agreement, hereby acknowledges the applicability of Government Code 16645 through 16649 to this OMRR&R Agreement. Furthermore, the Local Maintaining Agency, by signing this OMRR&R Agreement, hereby certifies that:
- a) No State funds disbursed by this OMRR&R Agreement will be used to assist, promote, or deter union organizing.
  - b) The Local Maintaining Agency shall account for State funds disbursed for a specific expenditure by this OMRR&R Agreement to show those funds were allocated to that expenditure.
  - c) The Local Maintaining Agency shall, where State funds are not designated as described in (b) above, allocate, on a pro rata basis, all disbursements that support the program.
  - d) If the Local Maintaining Agency make expenditures to assist, promote, or deter union organizing, the Local Maintaining Agency will maintain records sufficient to show that no State funds were used for those expenditures and that the Local Maintaining Agency shall provide those records to the Attorney General upon request.
21. COMPUTER SOFTWARE: The Local Maintaining Agency certifies that it has appropriate systems and controls in place to ensure that state funds will not be used in the performance of this OMRR&R Agreement for the acquisition, operation, or maintenance of computer software in violation of copyright laws.
22. DELIVERY OF INFORMATION, REPORTS, AND DATA: The Local Maintaining Agency agrees to expeditiously provide, during work on the State-Federal Flood Control System Modification Program (Early Implementation Projects) and throughout the term of this OMRR&R Agreement, such reports, data, information, and certifications as may be reasonably required by State.
23. RIGHTS IN DATA: The Local Maintaining Agency agrees that all data, plans, drawings, specifications, reports, computer programs, operating manuals, notes, and other written or graphic work produced in the performance of this OMRR&R Agreement shall be made available to the State and shall be in the public domain to the extent to which release of such materials is required under the California Public Records Act, Cal. Gov't Code §§ 6250 *et seq.* The Local Maintaining Agency may disclose, disseminate and use in whole or in part, any final form data and information received, collected, and developed under this OMRR&R Agreement, subject to appropriate acknowledgement of credit to State for financial support. The Local Maintaining Agency shall not utilize the materials for any profit-making venture or sell or grant rights to a third party who intends to do so. The State shall have the right to use any data described in this paragraph for any public purpose.
27. LOCAL MAINTAINING AGENCY NAME CHANGE: Approval of the State's Project Manager is required to change the Local Maintaining Agency's name as listed on this OMRR&R Agreement. Upon receipt of legal documentation of the name change the State will process the amendment. Payment of invoices presented with a new name cannot be paid prior to approval of said amendment.
28. AIR OR WATER POLLUTION VIOLATION: Under State laws, the Local Maintaining Agency shall not be: (1) in violation of any order or resolution not subject to review promulgated by the State Air Resources Board or an air pollution control district; (2) subject to cease and desist order not subject to review issued pursuant to Section 13301 of the Water Code for violation of waste discharge requirements or discharge prohibitions; or (3) finally determined to be in violation of provisions of federal law relating to air or water pollution.

## Attachment B: Draft Resolution

<p>Resolved by the _____ (Governing body, city council, or other)</p> <p>of the _____ (Name of Local Maintaining Agency)</p> <p>that pursuant and subject to all of the terms and provisions of the Safe Drinking Water, Water Quality and Supply, Flood Control, River and Coastal Protection Bond Act of 2006, and the Disaster Preparedness and Flood Prevention Bond Act of 2006, that funds awarded to _____ (Name of Funding Recipient)</p> <p>by the California Department of Water Resources for a State-Federal Flood Control System Modification Program project titled: _____ (Project title)</p> <p>have been accepted, and as a condition of accepting these funds the Funding Recipient committed to signing [modify if Funding Recipient and Local Maintaining Agency are not the same to add: "or having a Local Maintaining Agency sign"] an additional agreement with the Central Valley Flood Protection Board, or successor thereto, which requires _____ (Name of Local Maintaining Agency)</p> <p>to assume responsibility for operation, maintenance, repair, replacement, and rehabilitation of _____ (Project title)</p> <p>Therefore, the _____ (Presiding officer, president, city manager, or other official)</p> <p>of the _____ (Name of Local Maintaining Agency) is hereby authorized and directed to sign an operation, maintenance, repair, replacement and rehabilitation agreement with the Central Valley Flood Protection Board, or successor thereto.</p> <p>Passed and adopted at a regular meeting of the _____ (Board of Directors, Supervisors, etc.)</p> <p>of the _____ (Name of Local Maintaining Agency)</p> <p>on _____ (Date)</p>	<p>Resolution No. _____</p> <p>Authorized Signature _____</p> <p>Printed Name _____</p> <p>Title _____</p> <p>Clerk/Secretary _____</p>
--	---

Affix  
official  
seal  
here

**BEFORE THE BOARD OF TRUSTEES  
OF RECLAMATION DISTRICT 784**

**In re:**

**RESOLUTION APPROVING AND ADOPTING AN OPERATION, )  
MAINTENANCE, REPAIR, REPLACEMENT, AND )  
REHABILITATION AGREEMENT FOR THE FEATHER RIVER )  
AND THE YUBA RIVER LEVEE IMPROVEMENT PROJECTS. )**

**Res. No. 2011-07-01**

**WHEREAS**, the Feather River Levee Improvement Project and the Upper Yuba River Levee Improvement Project are modifications of the Sacramento River Flood Control Project which was authorized by Congress on March 17, 1917, and amended on May 15, 1928, August 26, 1937, August 18, 1941, August 17, 1954, and July 14, 1960;

**WHEREAS**, the Three Rivers Levee Improvement Authority (TRLIA) and the State of California, by and through the Department of Water Resources (Department), have executed funding agreements for both projects;

**WHEREAS**, the funding agreements for both projects require TRLIA to be responsible for the construction, operation, maintenance, repair, replacement, and rehabilitation of both projects;

**WHEREAS**, under the funding agreements for both projects, TRLIA may agree with Reclamation District 784 (the District) that the District shall assume responsibility for operation, maintenance, repair, replacement, and rehabilitation (OMRR&R) of both projects provided that TRLIA shall assume responsibility for OMRR&R if for any reason the District fails to perform its responsibilities under the OMRR&R Agreement;

**WHEREAS**, under the OMRR&R Agreement, the Central Valley Flood Protection Board (the Board) will oversee OMRR&R of both projects for the State of California, as part of the State Plan of Flood Control;

**WHEREAS**, a draft copy of the OMRR&R Agreement is attached hereto as Attachment A and incorporated herein by this reference; and

**WHEREAS**, prior to the adoption of this Resolution, the District's Board of Trustees held at least one public meeting, noticed in accordance with California law, at which oral and written presentations were permitted;

**NOW, THEREFORE BE IT RESOLVED**, by the Board of Trustees of Reclamation District 784 as follows:

Pursuant and subject to all the terms of the Safe Drinking Water, Water Quality and Supply, Flood control, River and Coastal Protection Bond Act of 2006, and the Disaster Preparedness and Flood Prevention Bond Act of 2006, the funds awarded to TRLIA by the California Department of Water Resources for State-Federal Flood Control System Modification Projects entitled the Feather River Levee Improvement Project and


the Upper Levee Improvement Project have been accepted, and as a condition of accepting these funds TRLIA committed to having the District sign an additional agreement with the Board to assume responsibility for OMRR&R of the Feather River Levee Improvement Project and the Upper Yuba River Levee Improvement Project.

The President of the District's Board of Trustees is hereby authorized directed to sign an operation, maintenance, repair, replacement, and rehabilitation agreement with TRLIA and the Central Valley Flood Protection Board, or successor thereto. The OMRR&R Agreement shall be of substantially the same form as the draft OMRR&R Agreement attached hereto as Attachment A, along with such changes and modifications as may be recommended by the District's staff and are consistent with the purposes of this resolution.

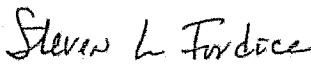
This Resolution shall become effective immediately.

The foregoing resolution was introduced at a scheduled meeting of the District's Board of Trustees, duly held on July 12, 2011, by Trustee GRAHAM, which motion was seconded by Trustee GOTHARD, and was approved and enacted by the following vote:

AYES:	<u>5</u>
NOES:	<u>0</u>
ABSTAIN:	<u>0</u>
ABSENT:	<u>0</u>

  
Rick Brown, President of the Board of Trustees

ATTEST: STEVEN FORDICE  
SECRETARY OF THE BOARD OF TRUSTEES

  
\_\_\_\_\_

APPROVED AS TO FORM  
CARL R. LINDMARK, DISTRICT COUNSEL

  
\_\_\_\_\_

**RESOLUTION NO. 2011-07****A RESOLUTION BY THE BOARD OF  
THREE RIVERS LEVEE IMPROVEMENT AUTHORITY  
REGARDING THE OPERATION, MAINTENANCE, REPAIR,  
REPLACEMENT AND REHABILITATION AGREEMENT**

*WHEREAS*, Three Rivers Levee Improvement Authority (TRLIA) is completing the fourth and final phase of its efforts to bring the RD 784 basin to 200-year protection and as part of its efforts it entered into two funding agreements with the State of California Department of Water Resources (DWR) for the State to provide hundreds of millions of dollars of funding; and

*WHEREAS*, each funding agreement provides that TRLIA must execute the OMRR&R Agreement or must provide a local maintaining agency willing to execute the Agreement and as of the date of this meeting RD 784 is expected to have reviewed and signed the OMRR&R Agreement; and

*WHEREAS*, in the OMRR&R Agreement TRLIA has agreed to two provisions: (1) TRLIA has agreed to indemnify the State for liability arising from the construction of the Feather and Yuba Projects, and (2) TRLIA has requested that if RD 784 fails to perform under the OMRR&R Agreement that TRLIA receive notice from the State of the failure and be given an opportunity to perform; and

*WHEREAS*, execution of the OMRR&R Agreement will allow proper closeout of the Project funding agreements and insure that DWR's funding is not interrupted:

***NOW, THEREFORE, BE IT RESOLVED THAT:***

1. The Board of the Three Rivers Levee Improvement Authority (pursuant and subject to all of the terms and provisions of the Safe Drinking Water, Water Quality and Supply, Flood Control, River and Coastal Protection Bond Act of 2006, and the Disaster Preparedness and Flood Prevention Bond Act of 2006) has been awarded funds by the California Department of Water Resources for a State-Federal Flood Control System Modification Program project entitled Feather River Levee Improvement Project and Yuba River Levee Improvement Project, and as a condition of accepting these funds Reclamation District 784 has committed to signing an OMRR&R Agreement with the Central Valley Flood Protection Board, or successor thereto, which requires Reclamation District 784 to assume responsibility for operation, maintenance, repair, replacement, and rehabilitation of the Projects.

2. The Board of the Three Rivers Levee Improvement Authority has agreed to indemnify the State for liability arising out of construction of the Projects, the Board desires to be informed of any failures to perform OMRR&R, and the Board is prepared to restate its existing obligations to operate and maintain those portions of the EIP Project upon which it performed work, and therefore the Board hereby authorizes and directs the

Executive Director to sign the OMRR&R Agreement with the Central Valley Flood Protection Board, or successor thereto.

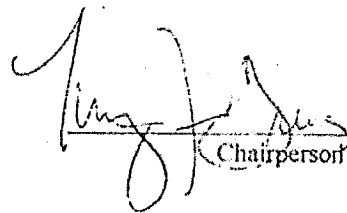
PASSED AND ADOPTED this 12 day of August, 2011, by the Board of Three Rivers Levee Improvement Authority by the following vote:

AYES: Directors Brown, Crippen, Graham, Griego

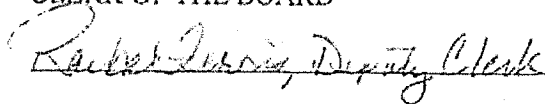
NOES: None

ABSENT: Director Nicoletti

ABSTAIN: None

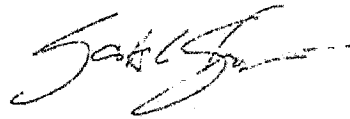
  
Chairperson


ATTEST: DONNA STOTTLEMEYER,  
CLERK OF THE BOARD

  
Rachel Lerner, Deputy Clerk

APPROVED AS TO FORM: GENERAL COUNSEL  
SCOTT SHAPIRO

The foregoing instrument is a Correct Copy  
of the original on file in this office  
ATTEST: DONNA STOTTLEMEYER  
Clerk of the Board of Supervisors of the  
County of Yuba, State of California



By   
Date: August 12, 2011